

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

**PROPOSED FINAL PRETRIAL
ORDER**

This Document Relates to:

Lisa Hyde, et al. v. C. R. Bard, Inc., et al.
CV-16-00893-PHX-DGC

(Assigned to the Honorable David G.
Campbell)

The following is the joint Proposed Final Pretrial Order to be considered at the
Final Pretrial Conference set for September 6, 2018.

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17 **B. STATEMENT OF JURISDICTION**

18 1. Jurisdiction is appropriate in this Court as the parties to this action are
19 citizens of different states and Plaintiffs allege that they have suffered damages in an
20 amount exceeding the minimum jurisdictional limits of this Court, 28 U.S.C. § 1332.

21 Plaintiffs are citizens of the state of Nevada. Defendant C. R. Bard, Inc. (“Bard”) is
22 a citizen of the state of Delaware and is a corporation duly organized and existing under
23 the laws of the state of Delaware, with its principal place in New Jersey. Defendant Bard
24 Peripheral Vascular, Inc. (“BPV”) is a citizen of the state of Arizona, is a wholly owned
25 subsidiary corporation of defendant Bard, and is duly organized and existing under the
26 laws of the state of Arizona with its principal place of business in Arizona.

27 2. Jurisdiction is not disputed.
28

C. STIPULATIONS AND UNCONTESTED FACTS AND LAW

1. The following material facts are admitted by the parties and require no proof:

- a. The Defendants in this case are C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“BPV”). BPV is the wholly-owned subsidiary of C. R. Bard, Inc., the parent company. Throughout this case, including in this pretrial order, the jury instructions and the verdict form, C. R. Bard, Inc. and BPV will be referred to collectively as “Bard” or “Defendants.”
- b. The product that is the subject of this lawsuit is a retrievable Bard IVC Filter¹ (“Filter”) that was designed, manufactured, marketed and sold by Bard;
- c. The Filter is conical in shape and consists of a main shaft to which twelve struts (six “arms” and six “legs”) are attached;
- d. The Filter is constructed of a nickel-titanium alloy called Nitinol;
- e. The Filter is a medical device that is implanted in the inferior vena cava (“IVC”), the largest vein in the human body;
- f. The United States Food and Drug Administration (“FDA”) cleared the Filter for commercial availability through the 510(k) process outlined in the Food, Drug and Cosmetic Act (“FCDA”);
- g. The G2X® IVC Filter was cleared for commercial availability in the United States for use in patients as a permanent filter with the option for retrieval on October 31, 2008;
- h. The Eclipse IVC Filter was cleared for commercial availability in the United States for use in patients as a permanent filter with the option for retrieval on November 23, 2009;

¹ Plaintiffs and Defendants dispute the specific identity of the filter. Plaintiffs contend the filter implanted in Mrs. Hyde was a G2X Filter, Defendants contend the filter was an Eclipse.

- i. Plaintiff Lisa Hyde was under the care of Dr. Vinodkumar Shah, M.D. who referred Mrs. Hyde to Dr. David Henry, an interventional radiologist, to consult with Mrs. Hyde regarding possible IVC filter.
- j. On February 25, 2011, Dr. David Henry implanted the Filter in Mrs. Hyde's inferior vena cava;
- k. On May 6, 2014, Mrs. Hyde underwent a CT scan revealing her IVC Filter had fractured, with the fractured strut having migrated to her right ventricle.
- l. On August 26, 2014, Dr. William Kuo removed the Filter and fractured strut through a percutaneous procedure.

2. The following material facts, although not admitted, will not be contested at trial by evidence to the contrary:

Plaintiffs are not seeking to recover past or future lost wages as part of their damages.

3. The following issues of law are uncontested and stipulated to by the parties:

- a. Plaintiffs' claims and Bard's defenses are governed by Wisconsin substantive law.
- b. The law enumerated in any jury instructions stipulated to by the Parties.
- c. The parties stipulate and agree that they are prohibited from making any reference or argument, or attempting to elicit any evidence in front of the jury suggesting and/or concerning the following topics, unless the issue is first raised with the Court outside the presence of the jury:
 1. Plaintiffs' receipt of compensation for her medical bills and expenses (collateral source);
 2. Mrs. Hyde's use of alcohol;
 3. Mrs. Hyde's smoking;

4. Mr. and Mrs. Hyde's prior bankruptcy;
5. Expert opinion testimony by Mr. or Mrs. Hyde regarding her medical care and treatment;
6. Other lawsuits or claims against Defendants. Pursuant to the Court's instruction in the Jones trial, the names of other cases will not be used, and both deposition and trial testimony will be referred to as "prior testimony." The parties also agree not to refer to the number of times a witness has been deposed.
7. C. R. Bard's 1994 criminal conviction.
8. When addressing the FDA clearance of the G2 IVC filter, the parties may state that the FDA cleared the G2 IVC filter two times and additionally the FDA also cleared changes to the delivery system for the G2 IVC filter two times.

D. CONTESTED ISSUES OF FACT AND LAW

1. Disputed issues of fact:

- a. **Design Defect:** Whether the filter implanted in Plaintiff Lisa Hyde had a Design Defect.

Plaintiffs' Contention: Mrs. Hyde contends that the IVC filter she received was a G2X filter. Mrs. Hyde contends that the Filter she received was defective in design, in a condition not contemplated by the ordinary user or consumer which is unreasonably dangerous to the ordinary user or consumer. Mrs. Hyde further contends that the Filter implanted in her IVC caudally migrated and tilted after it was properly implanted; that the Filter struts perforated through her vena cava and then penetrated into her retroperitoneum; that 1 of the fractured struts of the Filter fractured, and embolized/migrated to the right ventricle of the heart requiring interventional surgery. Lastly, foreseeable risks of harm posed by the Filter's design could have

1 been reduced or avoided by the adoption of a reasonable alternative
2 design by the manufacturer and the omission of such alternative
3 design rendered the product not reasonably safe. Plaintiffs are filing a
4 separate Trial Brief that will include this issue.

5 Defense Contention: Defendants contend that the Plaintiffs' design
6 defect claim is governed by Wis. Stat. 895.047(1). Defendants deny
7 that there is evidence that the requirements of the statute: 1) the
8 foreseeable risks of harm posed by the design of the filter implanted
9 in Mrs. Hyde could have been reduced or avoided by the adoption of
10 a reasonable alternative design by Bard; 2) the omission of the
11 alternative design rendered the filter not reasonably safe and; 3) the
12 filter implanted in Mrs. Hyde was unreasonably dangerous.
13 Defendants have filed a separate Trial Brief on this issue. (Dkt.
14 12358).

- 15 b. **Design Defect - Proximate Cause:** Whether a design defect of the
16 Filter was the proximate cause of Plaintiffs' injuries and damages.

17 Plaintiffs' Contention: Mrs. Hyde contends that the defective design
18 of her Bard Filter caused or contributed to cause her injuries.

19 Defendants' Contention: Defendants deny that any alleged design
20 defect in the filter caused or contributed to Mrs. Hyde's injuries.

- 21 c. **Negligent Design** – Whether Bard was negligent in the design of the
22 Filter.

23 Plaintiffs' Contention: Mrs. Hyde contends that Bard failed to use
24 that degree of care which is used by ordinary careful persons under
25 the same or similar circumstances in the design and/or testing of the
26 Filter that was implanted in her. Mrs. Hyde further contends that the
27 Filter implanted in her migrated and tilted after it was properly
28 implanted in her vena cava; that the Filter struts perforated through

her vena cava and then penetrated into her retroperitoneum; that 1 of the struts of the Filter fractured and embolized/migrated to the right ventricle of the heart requiring interventional surgery; and that Defendants' negligence/lack of ordinary care in the design of its Filter, and negligence/lack of ordinary care in testing its Filter caused her injury and damage. Defendants' lack of proper testing of the filter is evidence of their failure to act reasonably and use the proper degree of care, as well as their breach of the duty of care. Plaintiffs are filing a separate Trial Brief that will include this issue.

Defendants' Contention: Defendants deny they were negligent in the design of the filter. Defendants have filed a separate Trial Brief on this issue. (Dkt. 12358).

- d. **Negligent Design Causation:** Whether a design defect of the Filter was the proximate cause of Plaintiffs' injuries and damages.

Plaintiffs' Contention: Mrs. Hyde contends that Bard's negligence caused or contributed to cause her injuries and damages.

Defendants' Contention: Bard denies that any alleged design defect in the filter caused or contributed to Ms. Hyde's injuries.

- e. **Negligence *per se*:** Whether Defendants violated a safety statute which was designed to prevent injuries to patients like Plaintiff Lisa Hyde.

Plaintiffs' Contention: Mrs. Hyde contends that Bard's negligence *per se* caused or contributed to cause her injuries and damages. Mrs. Hyde contends that Bard's actions violated the following regulations and statutes:

21 U.S.C. § 331

21 U.S.C. § 352

21 C.F.R. § 803

1 21 C.F.R. § 806

2 21 C.F.R. § 820.250

3 21 U.S.C. § 321

4 21 C.F.R. § 820.100

5 21 C.F.R. § 820.198

6 In response to Defendants' contentions below, Bard is
7 incorrect that *Buckman* preempts Plaintiffs' negligence *per*
8 *se* claims. Defendant cites *Buckman* and *Perez, infra*, however
9 those cases are distinguishable because the present claims are based
10 upon Wisconsin common law negligence, not solely on the FDCA
11 regulations. To support their claims of negligence *per se*, Plaintiffs
12 will establish that Defendant negligently failed to design IVC filters
13 in a manner that complied with the previously cited regulations.
14 Plaintiffs are not attempting to enforce federal regulations, rather
15 they are relying on them to establish the standard of care in the
16 negligence claim.

17 This distinguishing of *Buckman* and the doctrine of implied
18 preemption to allow a negligence *per se* claim in Wisconsin was
19 explained well in *Garross v Medtronic, Inc.* 77 F. Supp. 3d 809
20 (E.D. Wis. 2015) and *Marvin v Zydus Pharmaceuticals. (USA), Inc.*
21 203 F. Supp. 3d 985 (W.D. Wis. 2016). In *Garross* the Court stated:

22 Nor are plaintiff's claims impliedly preempted. This is so
23 because none of them arise solely from a violation of federal law;
24 rather, each arises from an independent, well-recognized duty owed
25 under state law. *See Buckman*, 531 U.S. at 353, 121 S. Ct. 1012
26 (distinguishing between claims arising "from the manufacturer's
27 alleged failure to use reasonable care" and claims arising "solely"
28 from a violation of a federal requirement); *Bausch*, 630 F.3d at 558

1 (holding that claims which allege a “breach of a well-recognized
2 duty owed to [plaintiff] under state law” are not impliedly
3 preempted) *Id.* at 816.

4 *Garross*, 77 F. Supp.3d at 816. Wisconsin Federal Courts
5 have found that violations of FDA regulations may constitute
6 negligence *per se* since they are safety statutes. *See Lukaszewicz v.*
7 *Ortho Pharm. Corp.*, 510 F. Supp. 961, 964 (E.D. Wis.
8 1981), *amended*, 532 F. Supp. 211 (E.D. Wis. 1981).

9 The Wisconsin Supreme Court has also explained:

10 [A] safety statute merely establishes a
11 minimum standard of care and the conduct, even
12 though sanctioned or in conformity with the statute, is
13 not thereby necessarily relieved of conforming to the
14 common-law requirements of ordinary care. In any
15 event the establishment of a statutory definition of
negligence *per se* does not thereby result in a
preemption of the entire negligence question. There
remains the question of possible common-law
negligence.

16 *Hoffmann v. Wisconsin Elec. Power Co.*, 262 Wis. 2d 264, 278 (Wis.
17 2003) (citations omitted). Moreover, a “statute does not change the
18 common law unless the legislative purpose to do so is clearly
19 expressed in the language of the statute.” *Hoffman*, 262 Wis.2d at
20 278; *see also Fuchsgruber v. Custom Accessories, Inc.*, 244 Wis. 2d
21 758 (Wis. 2001) (stating to “accomplish a change in the common
22 law, the language of the statute must be clear, unambiguous, and
23 peremptory.”) (citations omitted). Plaintiffs are filing a separate Trial
24 Brief that will include this issue.

25 Defendants’ Contention: Under Wisconsin law, “[f]or the violation of
26 a safety statute to constitute negligence *per se*, a plaintiff must show:
27 (1) the harm inflicted was the type the statute was designed to
28 prevent; (2) the person injured was within the class of persons sought

1 to be protected; and (3) there is some expression of legislative intent
2 that the statute become a basis for the imposition for civil liability.”
3 *Tatur v. Solsrud*, 498 N.W.2d 232 (Wis. 1993); 1009 Wis. JI-Civil.
4 The Wisconsin Court of Appeals has held that, “[i]n Wisconsin,
5 violations of FDA regulations may constitute negligence per se.”
6 *Kurer v. Parke, Davis & Co.*, 679 N.W.2d 867, 874 (Wis. Ct.
7 App. 2004) (citing *Lukaszewicz v. Ortho Pharm. Corp.*, 510 F.
8 Supp. 961, 964 (E.D. Wis.), *amended*, 532 F. Supp. 211 (E.D. Wis.
9 1981)). But such a claim is impliedly preempted under 21 U.S.C.
10 § 337(a).

11 The District Court for the Western District of Wisconsin
12 addressed this question twice. In its first opinion that predated *Kurer*,
13 the court held that violations of FDA regulations cannot constitute
14 negligence per se under Wisconsin law because, “[f]ar from
15 containing an expression that FDA regulations are intended to form
16 the basis for civil liability, the law expresses the opposite intent.
17 Violations of the FDA are enforceable only by the United States.”
18 *Cali v. Danek Med., Inc.*, 24 F. Supp. 2d 941, 954 (W.D. Wis. 1998)
19 (citing 21 U.S.C. § 337(a)). There is no private right of action to
20 enforce the FDCA, therefore “it is apparent that the third [*Tatur*]
21 element is . . . absent.” *Id.*; *see also Buckman Co. v. Plaintiffs’ Legal*
22 *Comm.*, 531 U.S. 341, 349 n.4 (2001) (“The FDCA leaves no doubt
23 that it is the Federal Government rather than private litigants who are
24 authorized to file suit for noncompliance with the medical device
25 provisions.”).

26 After the *Kurer* decision, however, the District Court revisited
27 its *Cali* opinion, and ultimately held that “the plaintiffs may bring a
28 claim of negligence per se under Wisconsin law based on an alleged

1 violation of [FDA] regulations.” *Marvin v. Zyduz Pharma.*, 203 F.
2 Supp. 3d 985, 992 (W.D. Wis. 2016). Although the *Marvin* court
3 noted that the issue was “a close call” because the *Kurer* decision
4 failed to address whether § 337(a)’s limitation on private rights of
5 action showed a legislative intent to impose civil liability under state
6 law, the court ultimately acknowledged that “it is the current
7 statement on the law in Wisconsin.” *Id.*

8 As this Court is aware, however, “the plain language of
9 § 337(a) and the *Buckman* decision indicate that, where the FDCA is
10 concerned, such claim fails.” (Dkt. 10404 at 17 (citation omitted)).
11 This is a question of federal preemption, therefore the Court should
12 “look primarily to Supreme Court and Ninth Circuit cases” over
13 contrary Wisconsin authority. (Dkt. 8872 at 7). Plaintiffs assert no
14 violation of a Wisconsin ordinance, regulation, or statute in support
15 of their negligence per se claim. Thus, “as in *Buckman*, [Plaintiffs’]
16 negligence per se claim (or, more appropriately characterized, [their]
17 negligence claim based solely on violations of the FDA-Imposed
18 Requirements or other FDA regulations) is impliedly preempted by
19 the FDCA.” Doc. 10404 at 16 (citations omitted); *see also Perez. v.*
20 *Nidek Co.*, 711 F.3d 1109, 1120 (9th Cir. 2013) (finding fraud on the
21 FDA claim preempted where the plaintiff was not suing under state
22 law for conduct that happens to violate the FDCA, but instead is
23 suing solely “because the conduct violates the FDCA.”). This Court
24 agreed in both the *Booker* and *Jones* bellwether cases, and granted
25 summary judgment on similar negligence per se claims “because
26 allowing the claim[s] to go forward would authorize an
27 impermissible action to enforce provisions of the FDCA and its
28 implementing regulations.” (Dkts. 8874 at 17; 10404 at 17).

1 f. **Negligence *Per Se* Causation:** Whether Bard's alleged violation of
 2 cited regulations and statutes was the proximate cause of Plaintiffs'
 3 injuries and damages.

4 Plaintiffs' Contention: Mrs. Hyde contends that Bard's negligence
 5 *per se* caused or contributed to cause her injuries and damages.

6 Defendants' Contention: Bard denies that it violated any of the cited
 7 regulations and statutes and denies that any alleged violation caused
 8 or contributed to Ms. Hyde's injuries.

9 g. **Compensatory Damages** - Whether Plaintiffs are entitled to
 10 damages and, if so, the amount of the damages.

11 Plaintiffs' Contention: Mrs. Hyde contend she sustained injuries and
 12 damages and is entitled to a damage award for the following: medical
 13 expenses, such as hospital, doctor, and medicine bills both in the past
 14 and in the future; mental and physical pain and suffering in the past,
 15 present and future; and, impairment of bodily or physical faculties in
 16 the past, present and future. Plaintiffs also seek loss of consortium
 17 damages for Mr. Hyde.

18 Defendants' Contention: Defendants contend that no doctor has
 19 specifically attributed any of the symptoms that Mrs. Hyde has
 20 allegedly experienced to the filter or fractured strut, and Plaintiffs are
 21 not entitled to recover compensatory damages.

22 Mr. Hyde's loss of consortium is an independent cause of
 23 action that constitutes a direct injury to the spouse of the injured
 24 party. *Kottka v. PPG Indus., Inc.*, 388 N.W.2d 160, 170 (Wis. 1986).
 25 However, a spouse's loss of consortium is derivative in the sense that
 26 it does not arise unless the other spouse has sustained an injury.
 27 *Blunt v. Medtronic, Inc.*, 760 N.W.2d 396, 404 n.12 (Wis. 2009). "As
 28 a result, the merits of the loss of consortium claim would be

1 considered by the jury only if they find Bard liable for one or both
2 the design defect claims.

- 3 h. **Punitive Damages** - Whether Plaintiffs are entitled to an award of
4 punitive damages and, if so, the amount of the award.

5 Plaintiffs' Contention: Mrs. Hyde contends that there is
6 evidence that Bard acted maliciously towards Plaintiffs and/or in an
7 intentional disregard of the rights of the Plaintiffs. Bard acted with
8 the purpose to disregard the Plaintiffs' rights, or was aware that its
9 acts were substantially certain to result in the plaintiffs' rights being
10 disregarded. It acted deliberately, with actual disregard of the
11 plaintiffs' right to safety, health or life, and acted in a sufficiently
12 aggravated manner to warrant punishment by punitive damages
13 whether or not Bard intended to cause harm or injury to Mrs. Hyde.
14 The amount of punitive damages will be determined by the jury after
15 considering the seriousness of the hazard to the public, the
16 profitability of the misconduct, the attitude and conduct on the
17 discovery of the misconduct, the degree of the manufacturer's
18 awareness of the hazard and of its excessiveness, the employees
19 involved in causing or concealing the misconduct, the duration of
20 both the improper behavior and its concealment, the financial
21 condition of Bard and the probably effect on the Bard of a particular
22 judgment, and the total punishment the manufacturer will probably
23 receive from other sources.

24 Punitive damages under Wisconsin law are governed by Wis.
25 Stat. § 895.043. Pursuant to section 3, a "plaintiff may receive
26 punitive damages if evidence is submitted showing that the defendant
27 acted maliciously toward the plaintiff or in an intentional disregard
28 for the rights of the plaintiff." Wis. Stat. § 895.043(3).

1 “[T]he purpose of punitive damages is to punish the wrongdoer, and
2 to deter the wrongdoer and others from similar conduct, rather than to
3 compensate the plaintiff for any loss.... [O]nly when an award can be
4 fairly categorized as ‘grossly excessive,’ in relation to the [S]tate’s
5 interests in punishment and deterrence, does it enter the zone of
6 arbitrariness that violates due process.” *J.K. v. Peters*, 808 N.W.2d
7 141, 154 (Wis. Ct. App. 2011).

8 “In order to meet the ‘intentional disregard’ standard, the
9 defendant’s conduct must be (1) deliberate, (2) in actual disregard of
10 the rights of another, and (3) ‘sufficiently aggravated to warrant
11 punishment by punitive damages.’ *Centrifugal Acquisition Corp. v.*
12 *Moon*, 849 F. Supp. 2d 814, 839 (E.D. Wis. 2012) (citing *Berner*
13 *Cheese Corp. v. Krug*, 312 Wis.2d 251, 752 N.W.2d 800, 814
14 (2008)). A defendant’s conduct giving rise to punitive damages need
15 not be directed at the plaintiff seeking punitive damages. This burden
16 does not require a plaintiff to show that defendant intended to cause
17 harm or injury to the plaintiff. *Wosinski v. Advance Cast Stone Co.*,
18 901 N.W.2d 797, 820-21 (Wi. Ct. App. 2017) (citing *Strenke v.*
19 *Hogner*, 694 N.W.2d 296 (Wis. 2005)).

20 “If the finder of fact concludes punitive damages are available
21 and decides to award them, it then determines the amount of punitive
22 damages by considering factors such as the grievousness of the
23 defendant’s acts, the degree of malice involved, the potential damage
24 which might have been done by such acts as well as the actual
25 damage, and the defendant’s ability to pay.” *Centrifugal Acquisition*
26 *Corp. v. Moon*, 849 F. Supp. 2d 814, 839 (E.D. Wis. 2012) (quoting
27 *Boelter v. Tschantz*, 779 N.W.2d 467, 474 (Wis. Ct. App. 2009)). A
28 plaintiff who establishes a prima facie case for punitive damages may

1 introduce evidence of the defendant's wealth, and the "judge shall
 2 submit to the jury a special verdict as to punitive damages...." Wis.
 3 Stat. § 895.043(4). Other factors which may be considered include:

- 4 1. the seriousness of the hazard to the public;
- 5 2. the profitability of the misconduct;
- 6 3. the attitude and conduct on discovery of the misconduct;
- 7 4. the degree of the manufacturer's awareness of the hazard and
 8 of its excessiveness;
- 9 5. the employees involved in causing or concealing the
 10 misconduct;
- 11 6. the duration of both the improper behavior and its
 12 concealment;
- 13 7. the financial condition of the manufacturer and the probable
 14 effect on the manufacturer of a particular judgment; and
- 15 8. the total punishment the manufacturer will probably receive
 16 from other sources.

17 Defendants' Contention: Defendants deny that Plaintiffs are entitled
 18 to recover punitive damages. Punitive damages are not warranted
 19 because there is no evidence that Bard acted maliciously toward
 20 Mrs. Hyde or in an intentional disregard of her rights. Punitive
 21 damages are governed by statute, *see* W.S.A. 895.043, and they are
 22 imposed for the dual purposes of deterrence and punishment. *See*
 23 *Kimble v. Land Concepts, Inc.*, 845 N.W.2d 395, 406 (Wis. 2014).
 24 They may be awarded only when the jury finds by clear and
 25 convincing evidence that "the defendant acted maliciously toward the
 26 plaintiff or in an intentional disregard of the plaintiff's rights."
 27 W.S.A. 895.043(3). By enacting this statute, Wisconsin's Legislature
 28 changed the common law and heightened the state-of-mind

1 requirement of a defendant from a “wanton, willful and reckless”
2 disregard for another’s rights to an “intentional disregard” for
3 another’s rights. *Berner Cheese Corp. v. Krug*, 752 N.W.2d 800, 814
4 (Wis. 2008) (citations and quotations omitted). Indeed, according to
5 the Wisconsin Supreme Court, by passing the punitive damages
6 statute, “the legislature tried to make it harder for plaintiffs to recover
7 punitive damages.” *Strenke*, 694 N.W.2d at 303.

8 Malicious conduct under the statute means acts that “are the
9 result of hatred, ill will, desire for revenge, or inflicted under
10 circumstances where insult or injury is intended.” *Id.* at 302 (internal
11 quotation marks and citation omitted). Intentional disregard means a
12 person “acts with the purpose to disregard the plaintiff’s rights, or is
13 aware that his or her acts are substantially certain to result in the
14 plaintiff’s rights being disregarded.” *Id.* at 304. “[T]he act or conduct
15 must actually disregard the rights of the plaintiff.” *Id.* “Finally, the
16 act or conduct must be sufficiently aggravated to warrant punishment
17 by punitive damages.” *Id.* at 304–05.

18 Punitive damages cannot be awarded if the alleged malicious
19 or intentional disregard conduct did not cause the plaintiff’s injury.
20 “Juries are not given license to roam the caverns of their consciences
21 to punish conduct they deem despicable unless a plaintiff can prove
22 that he or she has suffered some actual damage as a result of the
23 conduct.” *Kehl v. Economy Fire & Cas. Co.*, 147 Wis. 2d 531, 534
24 (Wis. App. 1988). In other words, punitive damages may not be
25 awarded based on conduct that did “not cause or contribute to the
26 plaintiff’s loss.” *Henrikson*, 758 N.W.2d at 211.

27 The trial court must serve as a “gatekeeper[] before sending a
28 question on punitive damages to the jury.” *Strenke*, 694 N.W.2d at

305. “[A] question on punitive damages may not be given to the jury unless the trial court concludes that a reasonable jury could find from the evidence that entitlement to punitive damages has been proven by the middle burden of proof, clear and convincing evidence.” *Id.* (internal quotation marks and citation omitted). Thus, “punitive damages are not recoverable if the wrongdoer’s conduct is merely negligent.” *Id.* “Only when the conduct is so aggravated that it meets the elevated standard of an ‘intentional disregard of rights’ should a circuit court send the issue to a jury.” *Id.*

A plaintiff is “not entitled to punitive damages as a matter of right.” *Wangen v. Ford Motor Co.*, 294 N.W.2d 437, 458 (Wis. 1980). Thus, even if the issue of punitive damages makes it to a jury, and a jury finds that a defendant’s conduct meets the requisite standard of conduct, a jury does not have to award punitive damages. *Id.* Rather, punitive damages may be withheld at the jury’s discretion; its refusal to award punitive damages is not reviewable. *Id.* But the jury may not award punitive damages unless it has also awarded compensatory damages. *Tucker v. Marcus*, 418 N.W.2d 818, 820 (Wis. 1988).

Wisconsin law provides that punitive damages may not exceed twice the amount of compensatory damages recovered by the plaintiff, or \$200,000, whichever is greater. Wis. Stat. § 895.043(6)

i. **Product Identification** – Whether Mrs. Hyde received a G2X or Eclipse Filter.

2. **Disputed issues of law:**

a. The following was proposed by Plaintiffs as issues of law that are uncontested and stipulated to by the parties, but was not agreed to by Bard:

i. Product Liability (General Aspects)

1 Wisconsin's product liability law is a statutory scheme, enacted in 2011.
 2 *Forsythe v. Indian River Transp. Co.*, 344 Wis. 2d 520 (Wis. 2012). Common law is not
 3 superseded by the 2011 enacted statutory scheme. If pre-2011 common law rulings are not
 4 inconsistent with the statute, they stand. "Wisconsin's 2011 codification of its product
 5 liability law generally does not supersede the common law." *Janusz v. Symmetry Med.*
 6 *Inc.*, 256 F. Supp. 3d 995, 1000–01 (E.D. Wis. 2017).

7 ii. Strict Liability (General Aspects)

8 Wisconsin Jury Instruction-Civil 3200 sets forth the elements of a strict liability
 9 claim as follows: "(1) that the product was in a defective condition unreasonably
 10 dangerous; (2) that the product was defective when it left the possession or control of the
 11 seller; (3) that the defect was a cause (substantial factor) of the plaintiffs' injury; (4) that
 12 the seller was engaged in the business of selling such products (it does not apply to an
 13 isolated or infrequent sale); and (5) that the product was one which the seller expected to
 14 and did reach the consumer without substantial change."

15 iii. Design Defect (Negligent and Strict Liability)

16 Under Wisconsin law, negligent or defective design is generally a jury question.
 17 *See, e.g., Tidmore v. Midwest Trailer Sales, Inc.*, 2007 WL 5390049 (Wis. Cir. Ct. 2007).
 18 "As the Seventh Circuit has recognized, there is significant overlap between [negligent
 19 and strict liability] claims. *See Krien v. Harsco Corp.*, 745 F.3d 313, 317 (7th Cir. 2014)
 20 ("[A] claim of strict products liability is much like a negligence claim because it requires
 21 proof either that the product was unreasonably dangerous or, what amounts to the same
 22 thing, that it was defective.").

23 To succeed on a negligence claim, Plaintiffs must prove:

- 24 (1) the existence of a duty of care on the part of the defendant,
- 25 (2) a breach of that duty of care,
- 26 (3) a causal connection between the defendant's breach of the duty of care and
 27 the plaintiffs' injury, and
- 28 (4) actual loss or damage resulting from the [breach].

1 *Kilty v. Weyerhaeuser Co.*, 16-CV-515-WMC, 2018 WL 2464470, at *3–4 (W.D. Wis.
2 June 1, 2018) (citing *Hoida, Inc. v. M & I Midstate Bank*, 2006 WI 69, ¶ 23, 291 Wis. 2d
3 283, 717 N.W.2d 17); *Forsythe v. Indian River Transp. Co.*, 344 Wis. 2d 520 (Wis.
4 2012).

5 To recover on a strict liability design defect claim, the person injured by an
6 allegedly defective product must establish that (1) the foreseeable risks of harm posed by
7 the product’s design could have been reduced or avoided by the adoption of a reasonable
8 alternative design by the manufacturer and the omission of the alternative design renders
9 the product not reasonably safe, (2) the defective condition rendered the product
10 unreasonably dangerous to persons or property, (3) the defective condition existed at the
11 time the product left the manufacturer’s control, (4) the product reached the user or
12 consumer without substantial change in the condition in which it was sold, and (5) the
13 defective condition was a cause of Plaintiffs’ damages. Wis. Stat. § 895.047; WIS JI-
14 CIVIL 3260.1.

15 The consumer-contemplation test is used to determine elements (1) and (2) above.
16 A product is said to be “defective” when it is in a condition not contemplated by the
17 ordinary user or consumer which is unreasonably dangerous to the ordinary consumer.
18 *Green v. Smith & Nephew AHP, Inc.*, 245 Wis.2d 772 (Wis. 2001). Wisconsin uses the
19 “consumer contemplation” test for product-liability claims. *Green v. Smith & Nephew*
20 *AHP, Inc.*, 245 Wis. 2d 772 (Wis. 2001); *In re Zimmer Nexgen Knee Implant Products*
21 *Liab. Litig.*, 218 F. Supp. 3d 700, 723 (N.D. Ill. 2016), *aff’d sub nom. In re Zimmer,*
22 *NexGen Knee Implant Products Liab. Litig.*, 884 F.3d 746 (7th Cir. 2018) (citing *Green v.*
23 *Smith & Nephew AHP, Inc.*, 245 Wis. 2d 772, 826, 629 N.W.2d 727, 752 (2001)). Since
24 the enactment of the Wis. Stat. §895.047 there is no law directly on point addressing the
25 consumer expectation test, yet the Seventh Circuit interpreting Wisconsin law agreed that
26 a consumer’s expectation is at least a factor to consider. *In re Zimmer*, 218 F. Supp. 3d
27 700, 723. Ill. 2016).

iv. Negligence *per se*

“Negligence *per se* arises from the violation of a safety statute of three requirements are met: 1) the safety statute was designed to prevent the harm inflicted, 2) the person injured was in a protected class, and 3) the legislature has expressed its intent that the statutory section serve as a basis for the imposition of civil liability.” *Totsky v. Riteway Bus Serv., Inc.*, 607 N.W.2d 637, 644 (Wis. 2000). “The violation of [a] safety statute constitutes negligence *per se*.” *Id.* “A safety statute is a legislative enactment designed to protect a specified class of persons from a particular type of harm. *Id.* (quoting *Betchkal v. Willis*, 378 N.W.2d 684 (1985)). Under this standard, the CGMP standards qualify as safety statutes. 21 C.F.R. § 820.1 (The CGMP requirements “are intended to ensure that finished devices will be safe...and otherwise in compliance with the Federal Food, Drug, and Cosmetic Act...”). Further, the FDCA and CGMPs were enacted to protect consumers. See <https://www.fda.gov/aboutfda/transparency/basics/ucm214416.htm> (“The FDCA was the “first comprehensive federal consumer protection law...””) (emphasis added). Wisconsin courts previously held that “[i]n Wisconsin, violations of FDA regulations may constitute negligence *per se*.” *Kurer v. Parke,, Davis & Co.*, 679 N.W.2d 867, 874 (Wis. Ct. App. 2004) (citing *Lukaszewicz v. Ortho Pharm. Corp.*, 510 F. Supp. 961, 964 (E.D. Wis.), *amended*, 532 F. Supp. 211 (E.D. Wis. 1981)). The Court in *Kurer* continued, “Further, it is a ‘well-established rule that the enactment of safety statutes or legislation giving a commission jurisdiction over a certain activity does not abolish the duty arising under common-law negligence.’” *Kurer*, 679 N.W.2d at 874 (citing *Kemp v. Wisconsin Elec. Power Co.*, 172 N.W.2d 161 (1969)). See also *Marvin v. Zydus Pharma.*, 203 F. Supp.3d 985, 986 (W.D. Wis. 2016) (concurring that Wisconsin continues to recognize negligence *per se* claims and that such claims are not preempted).

v. Punitive Damages

Plaintiffs’ Contention: Under Wisconsin law, punitive damages may be awarded in addition to compensatory damages where the jury finds that the defendant acted

1 maliciously toward the plaintiffs or in an intentional disregard of the rights of the
2 plaintiffs. A defendant acts are malicious when they are the result of hatred, ill will, desire
3 for revenge, or inflicted under circumstances where insult to injury is intended. A
4 defendant acts in an intentional disregard of the rights of the plaintiffs if the defendant
5 acts with a purpose to disregard the plaintiffs' rights or is aware that his or her acts are
6 substantially certain to result in the plaintiffs' rights being disregarded. A defendant's
7 conduct giving rise to punitive damages need not be directed at the specific Plaintiffs
8 seeking punitive damages in order to recover punitive damages and there is no
9 requirement that a defendant intended to cause harm or injury to the plaintiffs. *Strenke v.*
10 *Hogner*, 279 Wis. 2d 52, 58 (Wis. 2005); WIS JI-CIVIL 1707.2

11 A result or consequence is intentional if the defendant acts with a purpose to cause
12 the result or consequence or is aware that the result or consequence is substantially certain
13 to occur from the person's conduct. The result or consequence here is the disregard of
14 rights. *Strenke*, 279 Wis. 2d at 69–70; WIS JI-CIVIL 1707.2

15 A jury may find an intentional disregard of the plaintiffs' rights if jurors are
16 satisfied that the defendant's act or course of conduct was: (1) deliberate; (2) an actual
17 disregard of the plaintiffs' right to safety, health, or life, a property right or some other
18 right; and (3) sufficiently aggravated to warrant punishment by punitive damages. WIS JI-
19 CIVIL 1707.2.

20 Defendants' Contention: Defendants disagree with Plaintiffs' analysis of
21 Wisconsin law on strict liability design defect. Defendants further disagree that the
22 appropriate test for product defect is the consumer expectations test. The appropriate test
23 is the risk benefit test under the Restatement Third as adopted by Wisconsin in 2011. As
24 to the strict liability and negligence claims, Defendants incorporate their Trial Brief
25 addressing the issues under Wisconsin law (Dkt 12358). As to the remaining claims,
26 Bard's position on the law is set forth above in the Contested Issues of Fact and Law.

E. LIST OF WITNESSES

1. Each party understands that it is responsible for ensuring that the witnesses it wishes to call to testify are subpoenaed. Each party further understands that any witness a party wishes to call shall be listed on that party's list of witnesses; the party cannot rely on the witness having been listed or subpoenaed by another party.

2. Many of the parties' summaries state that the witness will testify consistent with his/her deposition. The parties do not waive any objections, and these descriptions are subject to the prior rulings by the Court on motions *in limine* and the pending motions *in limine*. Counsel agrees that they and the witnesses will abide by those rulings.

Plaintiffs' Witnesses

1. Plaintiffs reserve the right to call witnesses for rebuttal as needed.

2. Witnesses who shall be called at trial (Live and/or by deposition):

Fact Witnesses:

Mrs. Lisa Hyde
c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

Mrs. Hyde is a Plaintiff in this action. She will testify regarding her medical care and treatment, as well as the surrounding and related circumstances; the nature, extent, and severity of her injuries and suffering; the physical and mental pain, suffering and discomfort associated with the injuries; and the impact of the injuries on her life, including without limitation the ongoing emotional and physical impact on her life. Lastly, she will testify consistent with her deposition given in this matter.

Mr. Mark Hyde
c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

Mr. Hyde is Plaintiff Lisa Hyde's husband. He will testify regarding his observations of Plaintiff Lisa Hyde's daily issues and injuries caused by her Filter and the failures of that filter, the overall impact of the injury on her daily activities and quality of life, the impact

1 of her injuries on their relationship, and Plaintiff Lisa Hyde's mental and physical
2 condition before and after the implant of her Filter. He will also testify consistent with his
3 deposition in this matter.

4 David Henry, MD
5 Radiology Consultants of Iowa
6 1948 1st Ave. NE
7 Cedar Rapids, IA 52402

8 Dr. Henry will testify regarding his examinations, care, treatment, observations and
9 diagnosis of Plaintiff Lisa Hyde related to her IVC filter and resulting injuries and
10 complications, as well as the nature and extent of injuries and complications caused by the
11 failure of Plaintiff Lisa Hyde's IVC Filter. Plaintiffs further anticipate Dr. Henry will
12 testify consistent with his medical records and his deposition taken in this case.

13 William T. Kuo, MD
14 Interventional Radiology
15 300 Pasteur Dr., Rm. H3652
16 Stanford, CA 94305

17 Dr. Kuo is an Interventional Radiologist at Stanford Medical Center and Hospital in
18 Stanford, California. He was the doctor who performed a complex retrieval of the Filter
19 and also a filter strut from Lisa Hyde's right ventricle on August, 26, 2014. Plaintiffs
20 expect that his testimony at trial will be consistent with the testimony at his deposition
21 taken on March 23, 2017, in this MDL.

22 Shari Allen (O'Quinn)
23 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

24 Ms. Allen was the Regulatory Affairs Manager for BPV in 2004 and the Director of
25 Regulatory Affairs and Clinical for BPV in 2005 and 2006. Plaintiffs expect that she is
26 knowledgeable regarding the matters that were the subject of her employment with Bard
27 and her depositions taken on November 2, 2010, in *Newton v. C. R. Bard, Inc., et al.*,
28 Superior Court of Arizona, Maricopa County, Case No. CV2009-019232, and October 9,
2013, in *Giordano v. C. R. Bard, Inc., et al.*, Superior Court of California, San Diego
County, East County Regional Center, Case No. 00069363-CU-PO-EC.

1 William Altonaga, M.D.
2 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

3 Dr. Altonaga was a consultant to and acting Medical Director for C. R. Bard beginning in
4 2001 and into 2004. Plaintiffs expect that he is knowledgeable regarding the matters that
5 were the subject of his employment with Bard and his deposition taken on October 22,
6 2013, in *Giordano v. C. R. Bard, Inc., et al.*, Superior Court of California, San Diego
7 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

8 Murray R. Asch, M.D.
9 c/o Lakeridge Health Corporation
10 Director of Interventional Radiology
580 Harwood Ave. S
Oshawa, ON L1S 2J4

11 Dr. Asch is an Interventional Radiologist who was involved in a pilot study to assess the
12 retrievability of the Recovery filter. Plaintiffs expect that he is knowledgeable regarding
13 the matters that were the subject of his study and work with Bard, as well as his
14 depositions taken on May 2, 2016, in *In re Bard IVC Filters Prod. Liab. Litig.*, MDL
15 No. 2641, United States District Court, District of Arizona (“the Bard IVC Filter MDL”) and
16 January 5, 2011, in *Lindsay, et al. v. C. R. Bard, Inc., et al.*, United States District
17 Court, Southern District of New York, Case No. 1:09-cv-05475-SHS.

18 Robert M. Carr, Jr.
19 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

20 Mr. Carr has been an employee at BPV since 2002; prior to that, he was an employee at
21 NMT working on filters. At BPV, he was the Program Director for Research &
22 Development from 2002 through 2010, Director Research & Development Biopsy from
23 2010 through 2012, Senior Director Research & Development Biopsy & Imaging from
24 2013 through 2014, and Vice President International since 2015. Plaintiffs expect that he
25 is knowledgeable regarding the matters that were the subject of his employment with
26 NMT and Bard and his depositions taken on March 18, 2016, and January 19, 2017, in the
27 Bard IVC Filter MDL; May 8, 2007, in *Hutson v. C. R. Bard, Inc., et al.*, Commonwealth
28 of Kentucky, McCracken Circuit Court, Division II, Case No. 06-CI-680; March 4, 2010,

1 in *Campbell v. C. R. Bard, Inc.*, Commonwealth of Kentucky, Scott Circuit Court,
 2 Division I, Case No. 08-CI-00541; September 23, 2010, in *Vedas v. C. R. Bard, Inc., et*
 3 *al.*, Superior Court of Arizona, Maricopa County, Case No. CV2010-019655;
 4 September 14, 2012, in *Albrecht, et al. v. Bard Peripheral Vascular, Inc.*, Circuit Court of
 5 Greene County, Missouri, Case. No. 1031-cv10504; April 17, 2013, in *Bouldry, et al. v.*
 6 *C. R. Bard, Inc., et al.*, United States District Court, Southern District of Florida, Case
 7 No. 12-809-51-CIV-Rosenbaum; October 25, 2013, in *Anderson v. C. R. Bard, Inc., et al.*,
 8 United States District Court, Eastern District of New York, Case No. CV11-2632 (DRH);
 9 November 5, 2013, in *Giordano v. C. R. Bard, Inc., et al.*, Superior Court of California,
 10 San Diego County, East County Regional Center, Case No. 00069363-CU-PO-EC;
 11 December 19, 2013, in *Payne v. C. R. Bard, Inc., et al.*, United States District Court,
 12 Middle District of Florida, Orlando Division, Case No. 6:11-cv-01582-Orl-37GJK;
 13 October 29, 2014, in *Tillman v. C. R. Bard, Inc.*, United States District Court, Middle
 14 District of Florida, Jacksonville, Case No. 3:13-cv-222-J-34-JBT; and December 19,
 15 2014, in *Kilver v. C. R. Bard, Inc.*, United States District Court, Central District of Illinois,
 16 Case No. 1:13-cv-01219-MMM-JAG.

17 Charis Campbell
 18 7778 E Black Rock Rd
 19 Scottsdale, AZ 85255

20 Ms. Campbell is a former Bard employee, identified in discovery as a member of clinical
 21 affairs department at BPV. Her name also appears on a number of EVEREST Medical
 22 Monitor Meeting Minutes with members of BBA and Bard, and as having been present in
 23 meetings with Dr. Krishna Kandarpa, who was contracted by and/or on behalf of Bard to
 24 adjudicate the adverse events arising from said retrievability trial. She is identified as a
 25 representative of Bard who provided an overview of the EVEREST program and device to
 26 Dr. Kandarpa and others.

27 Plaintiffs expect that she is knowledgeable regarding matters that are the subject of
 28 her employment with Bard, in particular her involvement in and with the EVEREST trial,
 interactions with Dr. Kandarpa in his role as medical monitor, and the contents and

1 subject matter of meetings, and the minutes of said meetings, relating to said trial and the
2 complications, adverse events, findings and opinions of Dr. Kandarpa and others involved
3 in the trial from both BBA and Bard regarding the design, performance and increased
4 risks identified from patient data and the adjudication of the adverse events reported and
5 related to the Modified Recovery G2 filter.

6 Andrzej Chanduszeko
7 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

8 Mr. Chanduszeko has been an employee of BPV since 2002; prior to that, he was an
9 employee at NMT working on IVC filters. At BPV, he was a Senior Engineer, Research &
10 Development Staff Engineer from 2004 through 2008, Staff Engineer from 2009 through
11 2014, and Principal Engineer since 2015. Plaintiffs expect that he is knowledgeable
12 regarding the matters that were the subject of his employment with Bard and NMT, as
13 well as his depositions taken on September 22, 2010, in *Vedas v. C. R. Bard, Inc., et al.*,
14 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, June 21, 2013,
15 in *Anderson v. C. R. Bard, Inc., et al.*, United States District Court, Eastern District of
16 New York, Case No. CV11- 2632 (DRH), October 10, 2013, in *Phillips v. C. R. Bard,*
17 *Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-
18 WGC, and April 23, 2015, in *Arnold, et al. v. C. R. Bard, Inc., et al.*, United States
19 District Court, Northern District of Texas, Dallas Division, Case No. 5:13-cv-00609-
20 HLH.

21 David Ciavarella, M.D.
22 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

23 Dr. Ciavarella has been Vice President Corporate Clinical Affairs at C. R. Bard since
24 2004. Plaintiffs expect that he is knowledgeable regarding the matters that were the
25 subject of his employment with Bard and depositions taken on March 1, 2011, and
26 August 29, 2012, in *Tyson v. C. R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa
27 County, Case No. CV2010- 011149, November 12, 2013, in *Giordano v. C. R. Bard, Inc.,*
28 *et al.*, Superior Court of California, San Diego County, East County Regional Center,

1 Case No. 00069363-CU-PO-EC, and July 29, 2014, in *Coker v. C. R. Bard, Inc., et al.*,
2 United States District Court, Northern District of Georgia, Atlanta Division, Case
3 No. 1:13-cv-0515.

4 Len DeCant
5 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

6 Mr. DeCant was Vice President Research & Development for BPV from 2002 to 2007.
7 Plaintiffs expect that he is knowledgeable regarding the matters that were the subject of
8 his employment with Bard and his deposition taken on May 24, 2016, in the Bard IVC
9 Filter MDL.

10 David Dimmit
11 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

12 Mr. Dimmit is the Vice President and Group Controller at C. R. Bard; Plaintiffs expect
13 that he is knowledgeable regarding matters that are/were subject to his employment with
14 Bard and his deposition was taken on January 26, 2017 as to the defendants' financial
15 status, assets, and net worth.

16 Mehdi Syed
17 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

18 Mr. Syed is the Vice President of Operations at Becton Dickinson and was designated by
19 Bard to testify on the subject notices for the deposition relating to punitive damages and
20 Bard's financial condition; Plaintiffs expect that he is knowledgeable regarding matters
21 that are/were subject to his employment with Bard and his deposition was taken on
22 March 2, 2018, as to Defendants' financial status, assets, and net worth.

23 Mary Edwards
24 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

25 Ms. Edwards was Vice President Regulatory Affairs/Clinical Affairs at C. R. Bard from
26 1999 to 2005. Plaintiffs expect that she is knowledgeable regarding the matters that were
27 the subject of her employment with Bard and her depositions taken on January 20, 2014,
28 in *Giordano v. C. R. Bard, Inc., et al.*, Superior Court of California, San Diego County,

1 East County Regional Center, Case No. 00069363-CU-PO-EC, and August 19, 2016, in
2 the Bard IVC Filter MDL.

3 Robert Ferrara
4 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

5 Mr. Ferrara was the Bard sales representative who called on and made presentations to
6 Mrs. Hyde's treating physicians during the relevant time period. Plaintiffs expect
7 Mr. Ferrara will testify on the subject matter of his employment at Bard, and consistent
8 with his deposition given in this case.

9 Christopher Ganser
10 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

11 Mr. Ganser was Vice President, Regulatory Science at C. R. Bard from 2005 through
12 2006 and Vice President Quality, Environmental Services, & Safety from 2007 through
13 2010. Plaintiffs expect that he is knowledgeable regarding the matters that were the
14 subject of his employment with Bard and his depositions taken on February 28, 2011, in
15 *Newton v. C. R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case
16 No. CV2009-019232, September 9, 2013, in *Anderson v. C. R. Bard, Inc., et al.*, United
17 States District Court, Eastern District of New York, Case No. CV11-2632 (DRH), and
18 October 11, 2016, in the Bard IVC Filter MDL.

19 David Mickey Graves
20 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

21 Mr. Graves was an Engineer at BPV beginning in 2004 to at least 2014. Plaintiffs expect
22 that he is knowledgeable regarding the matters that were the subject of his employment
23 with Bard and his deposition taken on February 27, 2014, in *Ocasio, et al. v. C. R. Bard,*
24 *Inc., et al.*, United States District Court, Middle District of Florida, Tampa Division, Case
25 No. 8:13-cv-01962-DSM-AEP.

26 Janet Hudnall
27 c/o Counsel for Bard Peripheral Vascular and C. R. Bard
28

1 Ms. Hudnall was an employee at BPV from 1998 to 2008, and has recently become
2 employed by Bard again; she held positions as Product Development Engineer, Product
3 Manager, and Marketing Manager. Plaintiffs expect that she is knowledgeable regarding
4 the matters that were the subject of her employment with Bard and her depositions taken
5 on November 3, 2010, in *Newton v. C. R. Bard, Inc., et al.*, Superior Court of Arizona,
6 Maricopa County, Case No. CV2009-019232, and November 1, 2013, in *Phillips v. C. R.*
7 *Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-
8 WGC.

9 Brian Hudson
10 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

11 Mr. Hudson was an employee at BPV from 1999 to 2012; he held positions as Quality
12 Engineer, Senior Risk Manager, and Associate Director Quality Assurance. Plaintiffs
13 expect that he is knowledgeable regarding the matters that were the subject of his
14 employment with Bard and his depositions taken on January 21, 2011, in *Tyson v. C. R.*
15 *Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2010-
16 011149, and January 17, 2014, in *Giordano v. C. R. Bard, Inc., et al.*, Superior Court of
17 California, San Diego County, East County Regional Center, Case No. 00069363-CU-PO-
18 EC.

19 Krishna Kandarpa, M.D.
20 National Institute of Health
Bethesda, MD 20892

21 Dr. Kandarpa was the Medical Monitor for Bard's EVEREST Retrievability Study.
22 Plaintiffs expect he is knowledgeable about and will provide testimony concerning the
23 EVEREST Study and all documents related to the same, including his observations, his
24 concerns and findings, complications and adverse events that occurred during the study,
25 design and purpose of the study, his recommendations to and interactions with Bard and
26 its representatives/agents based on the study, and all other related facts and circumstances.

1 Thomas Kinney, MD, MSME
2 c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
3 Phoenix, AZ 85016

4 Dr. Kinney is an Interventional Radiologist who was a consultant, key opinion leader and
5 invited panel member for Bard on IVC filters. Plaintiffs expect that he is knowledgeable
6 regarding the matters that were the subject of his relationship with Bard, and will testify
7 consistent with expert report and deposition given in this litigation, as well as his
8 experience and writings relating to Bard IVC Filters. Further, Dr. Kinney will testify
9 about the foundation and bases for his opinions, including his review of medical and
10 scientific literature, Bard documents, and other information he has reviewed and relied
11 upon. Dr. Kinney will also respond to opinions and testimony of defense experts.

12 Sanjeeva Kalva, M.D.
13 c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
14 Phoenix, AZ 85016

15 Dr. Kalva is an interventional radiology expert for Plaintiffs. Dr. Kalva is expected to
16 testify about the general liability of the Bard Defendants. Dr. Kalva will further testify
17 consistent with his deposition and expert report in this litigation, as well as his experience
18 and writings relating to Bard IVC filters. Further, Dr. Kalva will testify about the
19 foundation and bases for his opinions, including his review of medical and scientific
20 literature, Bard documents, and other information he has reviewed and relied upon.
21 Dr. Kalva will also respond to opinions and testimony of defense experts.

22 Anne Roberts, MD
23 c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
24 Phoenix, AZ 85016

25 Dr. Roberts is an interventional radiology expert for Plaintiffs. Dr. Roberts is expected to
26 testify about the general liability of the Bard Defendants. Dr. Roberts will further testify
27 consistent with her deposition and expert report in this litigation, as well as her experience
28 and writings relating to Bard IVC filters. Further, Dr. Roberts will testify about the

1 foundation and bases for her opinions, including her review of medical and scientific
2 literature, Bard documents, and other information he has reviewed and relied upon.
3 Dr. Roberts will also respond to opinions and testimony of defense experts.

4 Bill Little
5 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

6 Mr. Little was Vice President of Global Marketing at BPV from 2008 through 2011.
7 Plaintiffs expect that he is knowledgeable regarding the matters that were the subject of
8 his employment with Bard and his deposition taken on July 21, 2016, in the Bard IVC
9 Filter MDL.

10 Chad Modra
11 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

12 Mr. Modra was Director Quality Assurance and Vice President Quality Assurance at BPV
13 from 2011 through 2014. Plaintiffs expect that he is knowledgeable regarding the matters
14 that were the subject of his employment with Bard and his depositions taken on March 28,
15 2013, in *Phillips v. C. R. Bard, Inc.*, United States District Court, District of Nevada, Case
16 No. 3:12-cv-00344-RCJWGC, June 6, 2014, in *Ocasio, et al. v. C. R. Bard, Inc., et al.*,
17 United States District Court, Middle District of Florida, Tampa Division, Case
18 No. 8:13-cv-01962-DSM-AEP, and December 15, 2015, and January 20, 2016, in the
19 Bard IVC Filter MDL.

20 Frederick B. Rogers, M.D.
21 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

22 Dr. Rogers was the author of a large study establishing that IVC filters do not reduce the
23 rate of PE in trauma patients. Plaintiffs further expect that he is knowledgeable regarding
24 the matters that were the subject of his deposition taken on July 18, 2017, in *In re: Bard*
25 *IVC Filters Products Liability Litigation*, No. MD-15-02641-PHX-DGC, and will testify
26 consistent with that deposition. He is also disclosed as an expert, below.

27 Gin Schulz
28 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

1 Ms. Schulz was Vice Present Quality Assurance at BPV from 2005 to 2011 and in the
2 Quality Assurance department at C. R. Bard since 2011, including as Vice President
3 Quality Assurance. Plaintiffs expect that she is knowledgeable regarding the matters that
4 were the subject of her employment with Bard and her depositions taken on
5 September 13, 2013, in *Anderson v. C. R. Bard, Inc., et al.*, United States District Court,
6 Eastern District of New York, Case No. CV11-2632 (DRH), and January 30, 2014, in
7 *Phillips v. C. R. Bard, Inc.*, United States District Court, District of Nevada, Case
8 No. 3:12-cv-00344-RCJ-WGC.

9 Carol Vierling
10 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

11 Ms. Vierling was the Director, Regulatory Affairs at BPV from 1994 through 2002.
12 Plaintiffs expect that she is knowledgeable regarding the matters that were the subject of
13 her employment with Bard and her deposition taken on May 11, 2016, in the Bard IVC
14 Filter MDL.

15 Steve Williamson
16 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

17 Mr. Williamson has been President at BPV since 2012. Plaintiffs expect that he is
18 knowledgeable regarding the matters that were the subject of his employment with Bard
19 and his deposition taken on September 7, 2016, in the Bard IVC Filter MDL.

20 Natalie Wong
21 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

22 Ms. Wong has been an employee of BPV since 2004; she has held positions as Quality
23 Engineer, Field Assurance Quality Engineering Manager, Quality Engineering Manager,
24 and Senior Quality Engineer, New Product Development. Plaintiffs expect that she is
25 knowledgeable regarding the matters that were the subject of her employment with Bard
26 and her depositions taken on September 21, 2010, in *Vedas v. C. R. Bard, Inc., et al.*,
27 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, and October 18,
28 2016, in the Bard IVC Filter MDL.

Expert Witnesses:

Rebecca Betensky, Ph.D.
c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

Dr. Betensky is a biostatistician. Dr. Betensky is expected to testify about her analysis and data relating to complication rates of Bard's defective IVC filter, various design failure modes effects analysis documents, and about various filter migration test results. Dr. Betensky will testify consistent with her deposition and expert report. Further, Dr. Betensky will testify about the foundation and bases for her opinions, including her review of medical and scientific literature, Bard documents, and other information she has reviewed and relied upon. Dr. Betensky will also respond to opinions and testimony of defense experts.

Darren R. Hurst, M.D.
c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

Dr. Hurst is Plaintiffs' vascular and interventional radiologist expert. Dr. Hurst is expected to testify as to the Defendants' liability and the design problems associated with the IVC filter, causation, and damages. Dr. Hurst will testify consistent with his deposition and expert report in this case. Further, Dr. Hurst will testify about the foundation and bases for his opinions, including his review of medical and scientific literature, Bard documents, and other information he has reviewed and relied upon. Dr. Hurst will also provide foundational testimony for Plaintiffs' medical illustrations and animations. Dr. Hurst will also respond to opinions and testimony of defense experts.

David A. Kessler, M.D.
c/o Gallagher & Kennedy
2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

Dr. Kessler is a medical doctor and former FDA commissioner. Dr. Kessler is expected to testify consistent with his expert report and depositions. Further, Dr. Kessler will testify

1 about the foundation and bases for his opinions, including his review of medical and
2 scientific literature, Bard documents, and other information he has reviewed and relied
3 upon. Plaintiffs also anticipate that Dr. Kessler will also respond to opinions and
4 testimony of defense experts.

5 Suzanne Parisian
6 c/o Gallagher & Kennedy
7 2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

8 Dr. Parisian is a medical doctor and former FDA employee. Dr. Parisian is expected to
9 testify consistent with her expert report and depositions. Further, Dr. Parisian will testify
10 about the foundation and bases for her opinions, including his review of medical and
11 scientific literature, Bard documents, and other information she has reviewed and relied
12 upon. Plaintiffs also anticipate that Dr. Parisian will also respond to opinions and
13 testimony of defense experts.

14 Thomas Kinney, MD, MSME
15 c/o Gallagher & Kennedy
16 2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

17 Dr. Kinney is an interventional radiology expert for Plaintiffs. Dr. Kinney is expected to
18 testify about the general liability of the Bard defendants. Dr. Kinney will further testify
19 consistent with his deposition and expert report in this litigation. Further, Dr. Kinney will
20 testify about the foundation and bases for his opinions, including his review of medical
21 and scientific literature, Bard documents, and other information he has reviewed and
22 relied upon. Dr. Kinney will also respond to opinions and testimony of defense experts.

23 Robert McMeeking, Ph.D.
24 c/o Gallagher & Kennedy
25 2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016Dr.

26 Dr. McMeeking is a materials and mechanical engineer and is experienced in safety,
27 reliability, and effectiveness of biomedical implant devices. Dr. McMeeking is expected
28 to testify that the design of the G2X® and Eclipse filters are inherently dangerous and

1 prone to numerous failure modes rendering them not reasonably safe, that there existed
2 safer alternative designs which were available to Defendants, and that the risks of either or
3 both filters could have been reduced or avoided by the adoption of a reasonable alternative
4 design by Defendants, and the omission of the alternative design rendered the devices not
5 reasonably safe.. Dr. McMeeking is expected to testify and describe alternative designs of
6 IVC filters, which were feasible at relevant times prior to Plaintiff's implantation and
7 explanation of the subject Bard filter, and would have reduced the tendency of said to tilt,
8 perforate, migrate, fracture, impede the intended, expected and represented simple
9 retrieval of the device, and otherwise fail.

10 Dr. McMeeking will testify consistent with his prior depositions, testimony in *Booker* and
11 *Jones* trials, and expert report. Further, Dr. McMeeking will testify about the foundation
12 and bases for his opinions, including his review of medical, engineering and scientific
13 literature and learned treatises, experience, teachings, training, Bard documents, and other
14 information he has reviewed and relied upon. Dr. McMeeking will also respond to
15 opinions and testimony of defense experts. Dr. McMeeking may also respond to opinions
16 and testimony of defense experts. In addition, Plaintiffs anticipate that Dr. McMeeking
17 will testify consistent with his expert reports and depositions given to date.

18 Mark Moritz, M.D.
19 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

20 Dr. Moritz gave general expert opinions on behalf of Bard in the MDL, as well as case
21 specific opinions in at least one of the MDL bellwethers. Plaintiffs expect that he is
22 knowledgeable regarding the matters that were the subject of his deposition taken on
23 July 18, 2017, in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-
24 PHX-DGC, and will testify consistent with that deposition.

25 Derek David Muehrcke, M.D.
26 c/o Gallagher & Kennedy
27 2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

28 Dr. Muehrcke is a cardiothoracic and vascular surgeon. Dr. Muehrcke is expected to

1 testify about the liability of the Bard defendants as well as causation and damages caused
2 by the defective IVC filter. Dr. Muehrcke will testify consistent with his deposition and
3 expert report in this case. Further, Dr. Muehrcke will testify about the foundation and
4 bases for his opinions, including his review of medical and scientific literature, Bard
5 documents, and other information he has reviewed and relied upon. Dr. Muehrcke will
6 also provide foundational testimony for Plaintiffs' medical illustrations and animations.
7 Dr. Muehrcke will also respond to opinions and testimony of defense experts.

8 Frederick B. Rogers, M.D.
9 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

10 Dr. Rogers gave general expert opinions on behalf of Bard in the MDL, as well as case
11 specific opinions in at least one of the MDL bellwethers. He was the author of a large
12 study establishing that IVC filters do not reduce the rate of PE in trauma patients.
13 Plaintiffs further expect that he is knowledgeable regarding the matters that were the
14 subject of his deposition taken on July 18, 2017, in *In re: Bard IVC Filters Products*
15 *Liability Litigation*, No. MD-15-02641-PHX-DGC, and will testify consistent with that
16 deposition.

17 J. Matthew Sims, MC, MS
18 c/o Gallagher & Kennedy
19 2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

20 Mr. Sims is a Vocational Economist expert for the Plaintiffs. He will provide testimony
21 and opinion as to the present value of the life care plan for Plaintiffs and projection of
22 costs prepared by Plaintiffs' Medical Services Consultant and Life Care Planner expert,
23 Lora White. He will testify consistent with his expert report and deposition given in this
24 case.

25 Moni Stein, MD
26 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

27 Dr. Stein gave general expert opinions on behalf of Bard in the MDL, as well as case
28 specific opinions in at least one of the MDL bellwethers. Plaintiffs expect that he is

1 knowledgeable regarding the matters that were the subject of his deposition taken on
2 July 31, 2017 in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-
3 PHX-DGC, and will testify consistent with that deposition.

4 Michael Streiff, M.D.
5 c/o Gallagher & Kennedy
6 2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

7 Dr. Streiff is a hematology expert for Plaintiffs. Dr. Streiff is expected to testify about the
8 general liability of the Bard defendants, including without limitation the risk versus
9 benefit analysis associated with the use of IVC filters. Dr. Streiff will further testify
10 consistent with his deposition and expert report in this litigation. Further, Dr. Streiff will
11 testify about the foundation and bases for his opinions, including his review of medical
12 and scientific literature, medical and scientific literature he has authored and the
13 associated research, Bard documents, and other information he has reviewed and relied
14 upon. Dr. Streiff will also respond to opinions and testimony of defense experts.

15 Lora K. White, RNBC, BSN, CCM, CNLCP
16 c/o Gallagher & Kennedy
17 2575 E. Camelback Road, 11th Floor
Phoenix, AZ 85016

18 Ms. White is a Medical Services Consultant and Life Care Planner expert for the
19 Plaintiffs. She prepared a life care plan for Plaintiffs and projection of costs for the same
20 arising from the injuries and damages caused by the failure of Plaintiffs' Bard Filter. She
21 will testify consistent with her expert report and deposition given in this case.

22 7. Witnesses who may be called at trial (Live and/or by deposition):

23 Brett Baird
24 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

25 Mr. Baird was a Senior Product Manager for BPV in 2007 and a Marketing Manager for
26 BPV from 2008 through 2011. Plaintiffs expects that he is knowledgeable regarding the
27 matters that were the subject of his employment with Bard and his deposition taken on
28 June 9, 2016, in the Bard IVC Filter MDL.

1 Brian Barry
2 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

3 Mr. Barry was the Vice President Regulatory/Clinical Affairs for Bard Access Systems
4 from 1994 through 1997, Vice President Corporate Regulatory Affairs for C. R. Bard
5 from 1997 through 2000, and Vice President of Regulatory Affairs and Clinical Affairs
6 for C. R. Bard from 2003 to 2007. Plaintiffs expect that he is knowledgeable regarding the
7 matters that were the subject of his employment with Bard and his deposition taken on
8 January 31, 2014, in *Jones v. C. R. Bard, Inc.*, United States District Court, Northern
9 District of Texas, Dallas Division, Case No. 3:13-cv-00599-K.

10 Kevin Boyle
11 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

12 Mr. Boyle was Vice President of Research & Development at BPV from 2013 through
13 2015. Plaintiffs expect that he is knowledgeable regarding the matters that were the
14 subject of his employment with Bard and his deposition taken on February 2, 2017, in the
15 Bard IVC Filter MDL.

16 Gary S. Cohen, M.D.
17 Temple University
18 Medicine Education and Research Building (MERB)
3500 N. Broad Street
Philadelphia, PA 19140

19 Dr. Cohen is an Interventional Radiologist at Temple University Hospital. He was a
20 consultant and key opinion leader for Bard on IVC filters. Plaintiffs expect that he is
21 knowledgeable regarding the matters that were the subject of his deposition taken on
22 January 25, 2017, in the Bard IVC Filter MDL.

23 Robert Cortelezzi
24 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

25 Mr. Cortelezzi was an employee at BPV from approximately 1990 to 2008; he was a
26 Regional Manager from 2004 through 2008. Plaintiffs expect that he is knowledgeable
27 regarding the matters that were the subject of his employment with Bard and his
28 deposition taken on November 11, 2016, in the Bard IVC Filter MDL.

1 Thomas Ferari
2 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

3 Mr. Ferari was an Engineer at BPV. Plaintiffs expect that he is knowledgeable regarding
4 the matters that were the subject of his employment with Bard and his depositions taken
5 on October 20, 2010, in *Vedas v. C. R. Bard, Inc., et al.*, Superior Court of Arizona,
6 Maricopa County, Case No. CV2010- 019655, and all related cross-noticed cases and
7 April 2, 2014, in *Coker v. C. R. Bard, Inc., et al.*, United States District Court, Northern
8 District of Georgia, Atlanta Division, Case No. 1:13-cv-0515.

9 Kay Fuller
10 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

11 Ms. Fuller was Senior Regulatory Specialist at BPV from 1999 through 2004. Plaintiffs
12 expect that she is knowledgeable regarding the matters that were the subject of her
13 employment with Bard and her depositions taken on November 9, 2010, in *Newton v.*
14 *C. R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2009-
15 019232, and January 11, 2016, in the Bard IVC Filter MDL.

16 Holly Glass
17 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

18 Ms. Glass was Vice President Government & Public Relations at C. R. Bard from 2002
19 through 2009. Plaintiffs expect that she is knowledgeable regarding the matters that were
20 the subject of her employment with Bard and her deposition taken on September 23, 2016,
21 in the Bard IVC Filter MDL.

22 Jason Greer
23 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

24 Mr. Greer was a Sales Representative and then District Manager at BPV from 1999
25 through 2007. Plaintiffs expect that he is knowledgeable regarding the matters that were
26 the subject of his employment with Bard and his depositions taken on June 20, 2010, in
27 *Newton v. C. R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case
28 No. CV2009-019232, October 22, 2010, in *Vedas v. C. R. Bard, Inc., et al.*, Superior

1 Court of Arizona, Maricopa County, Case No. CV2010-019655, August 11, 2014, in
2 *Barkley, et al. v. C. R. Bard, Inc., et al.*, Arizona Superior Court, Maricopa County, Case
3 No. CV2011-021250, and September 26, 2011, in *Tyson v. C. R. Bard, Inc., et al.*,
4 Superior Court of Arizona, Maricopa County, Case No. CV2010-011149.

5 John Lehman, M.D.
6 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

7 Dr. Lehman was Group Medical Director and Vice President of Medical Affairs for C. R.
8 Bard from 1991 to 1995; he was a consultant and acting Medical Director for C. R. Bard
9 in 2003 and 2004. Plaintiffs expect that he is knowledgeable regarding the matters that
10 were the subject of his employment with Bard and his depositions taken on April 2, 2013,
11 in *Phillips v. C. R. Bard, Inc.*, United States District Court, District of Nevada, Case
12 No. 3:12-cv-00344-RCJ-WGC, and all related cross-noticed cases and August 7, 2014, in
13 *Coker v. C. R. Bard, Inc., et al.*, United States District Court, Northern District of Georgia,
14 Atlanta Division, Case No. 1:13-cv-0515.

15 Frank Lynch, M.D.
16 Penn State College of Medicine
17 500 University Drive
Hershey PA 17033

18 Dr. Lynch is an Interventional Radiologist at Penn State Hospital. He was a consultant and
19 key opinion leader for Bard on IVC filters. Plaintiffs expect that he is knowledgeable
20 regarding the matters that were the subject of his relationship with Bard and his deposition
21 taken on January 30, 2017, in the Bard IVC Filter MDL.

22 John McDermott
23 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

24 Mr. McDermott was President of BPV from 1996 through 2006. Plaintiffs expect that he
25 is knowledgeable regarding the matters that were the subject of his employment with Bard
26 and his depositions taken on November 1, 2010, in *Tyson v. C. R. Bard, Inc., et al.*,
27 Superior Court of Arizona, Maricopa County, Case No. CV2010-011149, and February 5,
28

1 2014, in *Giordano v. C. R. Bard, Inc., et al.*, Superior Court of California, San Diego
2 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

3 Tim Hug
4 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

5 Mr. Hug was the supervisor of Matthew Fermanich during the relevant time period and
6 when was the sales representative for Wheaton Franciscan Healthcare. Plaintiffs expect
7 that Mr. Hug has knowledge and would testify at trial regarding the information Bard
8 provided and did not provide to its sales force and to physicians relating to the IVC filters
9 marketed and sold to physicians and hospitals and specifically what information was
10 provided to him and to the sales representatives reporting to him, including Matthew
11 Fermanich, regarding Bard's IVC filters and what information they would and what could
12 have conveyed to physicians who would use those devices. Plaintiffs expect that his
13 testimony at trial will be consistent with the testimony at his deposition taken on
14 August 23, 2017, in this MDL

15 Matt Fermanich
16 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

17 Mr. Fermanich was a sales representative for Bard Peripheral Vascular Incorporated
18 ("BPV") at the time of and preceding the implantation of the G2X filter in Plaintiffs.
19 Mr. Fermanich's territory included Wheaton Franciscan Healthcare in Franklin,
20 Wisconsin. Plaintiffs expect that his testimony at trial will be consistent with Hsu
21 deposition taken on March 24, 2017, in the Bard IVC Filter MDL.

22 Abithal Raji-Kubba
23 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

24 Ms. Raji-Kubba was Vice President Research & Development at BPV from 2007 through
25 2010 and Vice President Lutonix Technology Center from 2011 through 2012. Plaintiffs
26 expect that she is knowledgeable regarding the matters that were the subject of her
27 employment with Bard and her deposition taken on July 18, 2016, in the Bard IVC Filter
28 MDL.

1 Michael Randall
2 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

3 Mr. Randall has been an employee of BPV in the Research & Development department
4 since 2006; he has held several positions, including Engineer, Program Manager,
5 Associate Director, and Director. Plaintiffs expect that he is knowledgeable regarding the
6 matters that were the subject of his employment with Bard and his depositions taken on
7 January 18, 2017, and February 2, 2017, in the Bard IVC Filter MDL.

8 Kim Romney
9 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

10 Ms. Romney has been an employee of BPV since 2011 and is presently a Senior Product
11 Manager for Ports and Filters. Plaintiffs expect that she is knowledgeable regarding the
12 matters that were the subject of her employment with Bard and her depositions taken on
13 August 30, 2016, September 7, 2016, and January 18, 2017, in the Bard IVC Filter MDL.

14 Jack Sullivan
15 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

16 Mr. Sullivan was an employee at BPV from 1994 to 2013; he was in the Sales department
17 and held positions including District Manager and Regional Manager. Plaintiffs expect
18 that he is knowledgeable regarding the matters that were the subject of his employment
19 with Bard and his depositions taken on September 16, 2016, and November 3, 2016, in the
20 Bard IVC Filter MDL.

21 Alex Tessmer
22 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

23 Mr. Tessmer was an employee and engineer at BPV in the Research & Development
24 department from 1997 through 2004. Plaintiffs expect that he is knowledgeable regarding
25 the matters that were the subject of his employment with Bard and his deposition taken on
26 June 12, 2013, in *Phillips v. C. R. Bard, Inc.*, United States District Court, District of
27 Nevada, Case No. 3:12-cv-00344-RCJ-WGC.

1 Doug Uelmen
2 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

3 Mr. Uelmen was an employee at C. R. Bard and then BPV from approximately 1981
4 through 2005; he was Vice President Quality Assurance at BPV from 2003 through 2005.
5 Plaintiffs expect that he is knowledgeable regarding the matters that were the subject of
6 his employment with Bard and his depositions taken on October 4, 2013, in *Giordano v.*
7 *C. R. Bard, Inc., et al.*, Superior Court of California, San Diego County, East County
8 Regional Center, Case No. 00069363-CU-PO-EC, and May 13, 2014, in *Coker v. C. R.*
9 *Bard, Inc., et al.*, United States District Court, Northern District of Georgia, Atlanta
10 Division, Case No. 1:13-cv-0515.

11 John Van Vleet
12 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

13 Mr. Van Vleet has been the Vice President Regulatory Affairs/Clinical Affairs at BPV
14 since 2007. Plaintiffs expect that he is knowledgeable regarding the matters that were the
15 subject of his employment with Bard and his depositions taken on September 29, 2016,
16 and January 17, 2017, in the Bard IVC Filter MDL.

17 Bryan Vogel
18 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

19 Mr. Vogel has been a Clinical Specialist II for Bard since 2012. Plaintiffs expect that he is
20 knowledgeable regarding the matters that were the subject of his employment with Bard
21 and his deposition taken on August 15, 2017, in the Bard IVC Filter MDL.

22 John Weiland
23 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

24 Mr. Weiland has been the President and Chief Operating Officer of C. R. Bard throughout
25 the relevant time period. Plaintiffs expect that he is knowledgeable regarding the matters
26 that were the subject of his employment with Bard and his deposition taken on April 23,
27 2014, in *Phillips v. C. R. Bard, Inc.*, United States District Court, District of Nevada, Case
28 No. 3:12-cv-00344-RCJWGC.

1 John Wheeler
2 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

3 Mr. Wheeler has been employed in the Quality Assurance department at BPV since 2012.
4 Plaintiffs expect that he is knowledgeable regarding the matters that were the subject of
5 his employment with Bard and his deposition taken on July 29, 2016, in the Bard IVC
6 Filter MDL.

7 Mark Wilson
8 c/o Counsel for Bard Peripheral Vascular and C. R. Bard

9 Mr. Wilson worked in the Sales department at BPV from 2006 through 2010 as a sales
10 training manager. Plaintiffs expect that he is knowledgeable regarding the matters that
11 were the subject of his employment with Bard and the deposition taken on January 31,
12 2017, in the Bard IVC Filter MDL.

13 8. Witnesses who are unlikely to be called at trial (Live and/or by deposition):

14 N/A

15 **Defendants' Witnesses:**

16 Because of the time limits, Defendants request that the following issues be
17 addressed during the Pretrial Conference. The parties have met and conferred on these
18 issues and, as set forth above, Plaintiffs do not believe these issues are appropriate for
19 inclusion in this pretrial order:

20 1. Given the large number of Bard employees and former who have been
21 subpoenaed by Plaintiffs, and for whom Bard has accepted subpoenas, and for the
22 efficiency of the trial under the time limits, Defendants request that, as the Court directed
23 and parties agreed in the previous MDL trials, the parties provide each other with the
24 names of witnesses who will be called live at least 48 hours in advance of the witness
25 being called, and provide depositions designations at least 24 hours before the deposition
26 is played.

27 2. Dr. Murray Asch
28

1 a. Defendants' Contention: Plaintiffs have indicated that they intend to call
2 Dr. Murray Asch by prior testimony and designated from a deposition.
3 Pursuant to FRE 804(b)(1), Defendants have designated from Dr. Asch's
4 testimony in the *Booker* and *Jones* trials, and Plaintiffs have indicated that
5 they object to the use of his prior trial testimony. Defendants are prepared to
6 address this during the Pretrial Conference and, because there is no video of
7 that testimony, Defendants seek the Court's direction as to how it prefers
8 Dr. Asch's testimony should be presented at trial.

9 b. Plaintiffs' Contention: Dr. Asch was deposed by agreement of the parties in
10 Ontario, Canada on May 2, 2016, as part of the MDL 2641 generic
11 discovery process. Both parties and their representatives to the Hyde action
12 had an opportunity and similar motive at said deposition to develop
13 testimony by direct, cross-, or redirect examination pursuant to 804(b), at
14 said deposition. Accordingly, pursuant to Rule 32(a)(4) Fed. R. Civ. P.
15 either party may use Dr. Asch's deposition testimony for any purpose.
16 Plaintiffs object to the use of any prior trial testimony by Dr. Asch per
17 Federal Rules of Evidence 801(c)(1) and (2), 802, and failure to satisfy 804.

18 3. Plaintiffs have indicated that they intend to play the depositions of certain of
19 Defendants' expert witnesses who Defendants do not intend to call during this trial.
20 Defendants request the same ruling as the Court made in the previous trials that while
21 Plaintiffs may use portions of the depositions, "they may not disclose through argument or
22 deposition excerpts that the experts were originally retained by Defendants." (Dkt 10382,
23 Page 3:22-26). And further that before a deposition of a Bard expert may be played that
24 "there should be some showing ... that no other expert of similar qualifications is
25 available, or that the unavailable expert has some unique testimony to contribute." (*Id.*,
26 Page 4:104).

27 4. Plaintiffs list two regulatory experts (Dr. Kessler and Dr. Parisian).
28 Defendants request that Plaintiffs identify which one they intend to call.

4. **Defendants' Witnesses:**

Defendants' witnesses who shall be called at trial (either live or by deposition):

Robert Carr

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Carr is currently Vice President of International at BPV. He previously held the title of Senior Director of Research and Development at BPV, with responsibility for IVC filters. Mr. Carr may provide testimony regarding biomedical and biomechanical engineering generally, as well as testimony regarding the design, development, manufacture, testing, clearance, evolution, and use of Bard filters, specifically. Mr. Carr may also provide testimony that was the subject of his previous deposition testimony or the subject of declarations/affidavits he has submitted in this action.

Andre Chanduszko

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Chanduszko is an employee of BPV working as a staff engineer with responsibilities related to the design, development, and testing of IVC filters. Mr. Chanduszko may provide testimony regarding biomedical and biomechanical engineering generally, as well as testimony regarding the design, development, manufacture, testing, clearance, evolution, and use of Bard filters, specifically. Mr. Chanduszko may also provide testimony that was the subject of previous disclosures or his previous deposition testimony.

Chad Modra

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Modra was formerly Vice President of Quality Assurance at BPV, and is currently Staff Vice President of Operations at C. R. Bard, Inc. Mr. Modra may

1 testify regarding any and all aspects of Bard's quality assurance processes that are in place
2 or that have been in place for Bard's retrievable IVC filters. Mr. Modra may testify
3 regarding Bard's processes and procedures for addressing complaints, including complaint
4 handling, investigations, and MDR reporting for its IVC filters. He may also testify to
5 certain communications and inspections/audits with FDA. To the extent that evidence
6 related to the FDA Warning and 483 Letters is admitted, Mr. Modra may offer testimony
7 regarding the same. Mr. Modra may also provide testimony that was the subject of his
8 previous deposition testimony or the subject of declarations/affidavits he has submitted in
9 this action.

10 **Christopher S. Morris, M.D.**

11 Department of Radiology
12 The University of Vermont Medical Center
13 111 Colchester Avenue
Burlington, VT 05401
802-847-8359
Expert Witness

14 **Subject Matter:** Dr. Morris is a medical doctor and is a Fellow of the Society of
15 Interventional Radiology. He is certified in Radiology and holds a Certificate of Added
16 Qualifications in Vascular and Interventional Radiology. Dr. Morris is a Professor of
17 Radiology and Surgery at the College of Medicine at the University of Vermont.
18 Dr. Morris may provide expert testimony about the historical use, risks, and benefits of
19 IVC filters; the health conditions that IVC filters are used to treat; alternate treatments for
20 DVT and Pulmonary Embolism; and the medical literature related to IVC filters.
21 Dr. Morris will also testify regarding his personal experience placing and retrieving IVC
22 filters, including Bard IVC filters, and specifically that Bard retrievable filters are safe and
23 effective. He may respond to assumptions, opinions, and testimony offered by various
24 Plaintiffs' experts as they relate to the same. Dr. Morris also may provide expert
25 testimony about Plaintiffs' medical treatment and her IVC filter. Dr. Morris is expected to
26 offer opinions and testify consistent with his expert report(s) served in the MDL, and his
27 previous deposition testimony.

1 **Mike Randall**

2 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
3 201 17th Street NW, Suite 1700, Atlanta, GA 30363
4 404-322-6000
5 Fact Witness

6 **Subject Matter:** Mr. Randall is currently a Director of Research and Development for
7 BPV. Mr. Randall may provide testimony regarding biomedical and biomechanical
8 engineering generally, as well as testimony regarding the design, development,
9 manufacture, testing, clearance, evolution, and use of Bard filters, specifically.
10 Mr. Randall may also provide testimony that was the subject of his previous deposition
11 testimony.

12 **John Van Vleet**

13 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
14 201 17th Street NW, Suite 1700, Atlanta, GA 30363
15 404-322-6000
16 Fact Witness

17 **Subject Matter:** Mr. Van Vleet an employee of BPV. While at BPV, Mr. Van Vleet has
18 been the Vice President of Regulatory and Clinical Affairs since 2007. Mr. Van Vleet may
19 testify concerning any and all aspects of Bard's clinical affairs policies, procedures, and
20 practices that are, or have been, in place with respect to Bard's IVC filters. Mr. Van Vleet
21 may also testify regarding the regulatory clearance process and communications between
22 the FDA and BPV. Mr. Van Vleet may also provide testimony that was the subject of his
23 previous deposition testimony or the subject of declarations/affidavits he has submitted in
24 this action.

25 Witnesses who may be called at trial (either live or by deposition):

26 **Murray Asch**

27 c/o Lakeridge Health Corporation
28 Director of Interventional Radiology
 580 Harwood Ave. S
 Oshawa, ON L1S 2J4

 Dr. Asch is an Interventional Radiologist who was involved in a pilot study to assess the
retrievability of the Recovery filter. Defendants expect that he is knowledgeable regarding
the matters that were the subject of his study and work with Bard, as well as his deposition
taken on May 2, 2016, in *In re Bard IVC Filters Prod. Liab. Litig.*, MDL No. 2641,

1 United States District Court, District of Arizona (“the Bard IVC Filter MDL”) and his trial
 2 testimony in *Booker v. Bard* and *Jones v. Bard*, United States District Court, District of
 3 Arizona

4 **Brain Barry**

5 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
 6 201 17th Street NW, Suite 1700, Atlanta, GA 30363
 404-322-6000
 Fact Witness

7 **Subject Matter:** Mr. Barry is a former employee of C. R. Bard. He may testify
 8 regarding the matters that were the subject of his employment with Bard and his
 9 deposition.

10 **Kevin Boyle**

11 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
 12 201 17th Street NW, Suite 1700, Atlanta, GA 30363
 404-322-6000
 Fact Witness

13 **Subject Matter:** Mr. Boyle is currently the Vice President of Research and Development
 14 for BPV. Mr. Boyle may testify about BPV’s policies and procedures in place for its
 15 research and development of its products, including IVC filters. He may testify regarding
 16 the testing, development, and design of Bard’s IVC filters. He may also provide testimony
 17 that was the subject of his previous deposition testimony.

18 **Paul Briant, Ph.D., P.E.**

19 Exponent
 149 Commonwealth Drive
 20 Menlo Park, CA 94025
 650-326-9400
 21 Expert Witness

22 **Subject Matter:** Dr. Briant is a mechanical engineer who specializes in mechanical
 23 engineering, solid mechanics, and finite element analysis (FEA) of structures, including
 24 medical devices. He is a Principal Engineer with Exponent Failure Analysis Associates.
 25 Dr. Briant may provide expert testimony on mechanical engineering, solid mechanics, and
 26 finite element analysis (FEA). He may respond to assumptions, opinions, and testimony
 27 offered by Plaintiffs’ expert Dr. McMeeking. Dr. Briant is expected to offer opinions and
 28 testify consistent with his expert report(s) served in the MDL, and his previous deposition

1 testimony.

2 **David Ciavarella, M.D.**

3 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
4 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

5 **Subject Matter:** Dr. Ciavarella is an employee of C. R. Bard, Inc. He is currently Vice
6 President, Corporate Clinical Affairs at Bard, and he has held that title since he began
7 working for C. R. Bard in 2004. Dr. Ciavarella may testify concerning any and all aspects
8 of Bard's clinical affairs policies, procedures, and practices that are, or have been, in place
9 with respect to Bard's IVC filters. Dr. Ciavarella may also provide testimony that was the
10 subject of his previous deposition testimony.

11 Based on reports received by Bard, Dr. Ciavarella may also testify concerning the
12 rates of complications with Bard's IVC filters and analyses performed by Bard regarding
13 adverse event rates. Dr. Ciavarella may also testify that the complication rates reported to
14 Bard remain below the guidelines established by the Society of Interventional
15 Radiologists and Bard's action limits. He may also provide testimony that was the subject
16 of his previous deposition testimony.

17 **Robert Cortelezzi**

18 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
19 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

20 **Subject Matter:** Mr. Cortelezzi was an employee at BPV from approximately 1990 to
21 2008; he was a Regional Manager from 2004 through 2008. He may testify regarding the
22 matters that were the subject of his employment with Bard and his deposition taken on
23 November 11, 2016, in the Bard IVC Filter MDL.

24 **Joni Creal**

25 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
26 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

27 **Subject Matter:** Ms. Creal started with BPV in 2009. She is Associate Director of
28 Regulatory Affairs. She may testify about BPV's overall regulatory strategy for its filter

1 lines. She may also testify concerning other regulatory options considered by BPV when it
2 determined the best approach to gain FDA clearance for its products. Ms. Creal may
3 testify regarding communications between the FDA and BPV concerning the clearance
4 process for its filters, and any communication between BPV and the FDA concerning
5 these matters. Ms. Creal may also testify regarding BPV's response to requests from the
6 FDA. Ms. Creal may also testify concerning BPV's decision to conduct clinical trials, and
7 the process and procedures for clinical trials and studies.

8 Ms. Creal may also testify regarding the steps that BPV took to ensure that the
9 FDA was always abreast of complications, product improvements, and potential changes
10 to IFUs for its filters. In this regard, Ms. Creal may testify regarding BPV's open and
11 frank communications with the FDA and the FDA's appreciation for BPV's openness and
12 honesty.

13 **Len DeCant**

14 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
15 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

16 **Subject Matter:** Mr. DeCant is a former employee of BPV. He served as Vice President
17 of Research and Development from 2002 through 2007. Mr. DeCant may testify regarding
18 any and all aspects of the design, development, testing, clearance, evolution, and use of
19 Bard filters, including Bard's policies and procedures for design, testing, and evaluation
20 of filters. Mr. DeCant may also provide testimony that was the subject of his previous
21 deposition testimony.

22 **John DeFord**

23 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
24 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

25 **Subject Matter:** Dr. DeFord is currently Senior Vice President of Science, Technology
26 and Clinical Affairs of C. R. Bard. Dr. DeFord may testify regarding any and all aspects
27 of the design, development, testing, clearance, evolution, and use of Bard filters, including
28 Bard's policies and procedures for design, testing, and evaluation of filters. Dr. DeFord

1 may also provide testimony that was the subject of his previous deposition testimony.

2 **Mary Edwards**

3 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
4 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

5 **Subject Matter:** Ms. Edwards is a former Vice President for Regulatory/Clinical Affairs
6 of BPV. She may provide testimony regarding of the regulatory clearance process
7 undertaken by BPV for the Recovery® Filter including the 510(k) processes and actions
8 taken by BPV. Additionally, Ms. Edwards may testify concerning BPV's overall
9 regulatory strategy for its filter lines, including the regulatory approach taken by BPV
10 concerning the Recovery® Filter. In addition, Ms. Edwards may also testify concerning
11 other regulatory options considered by BPV when it determined the best approach to gain
12 FDA clearance for its new product. Ms. Edwards may testify regarding the regulatory
13 history of Bard's filters, communications between the FDA and BPV concerning the
14 Recovery® Filter, the clearance process for the Recovery® Filter, and post-clearance
15 communications BPV had with the FDA while she was employed with BPV and
16 testimony that was the subject of her depositions.

17 **Audrey Fasching, Ph.D., P.E.**

18 Anamet, Inc.
19 26102 Eden Landing Road, Suite 3
Hayward, CA 94545
20 510-887-8811
Expert Witness

21 **Subject Matter:** Dr. Fasching is a metallurgical engineer with experience in the areas of
22 failure analysis, welding, heat treatment, corrosion and biomaterials, including nitinol.
23 She is a Senior Materials Engineer at Anamet. She may provide expert testimony about
24 the properties and uses of nitinol in medical devices, industry standards for manufacture
25 of medical device grade nitinol, her observations of the various filter conditions through
26 examination of the filter at issue in this case and other Bard IVC filters. Dr. Fasching may
27 respond to assumptions, opinions, and testimony offered by Plaintiffs' expert
28

1 Dr. McMeeking. Dr. Fasching is expected to offer opinions and to testify consistent with
2 her expert report(s) served in the MDL, and her previous deposition testimony.

3 **David W. Feigal, M.D., M.P.H.**

4 11806 Barranca Road
5 Santa Rosa Valley, CA 93012
6 540-738-2550
7 Expert Witness

8 **Subject Matter:** Dr. Feigal is a medical doctor with a Master's Degree in Public Health
9 in the fields of epidemiology and biostatistics. Dr. Feigal may provide expert testimony as
10 an epidemiologist regarding the available resources for analysis of complications rates in
11 IVC filters, including the SIR Guidelines and the limitations of those resources in
12 accurately reporting rates, predicting rates, or comparing rates of those devices. He may
13 respond to assumptions, opinions, and testimony offered by various Plaintiffs' experts as
14 they relate to such analyses. Dr. Feigal is expected to offer opinions and testify consistent
15 with his expert report served in the MDL, and his previous deposition testimony.

16 **Matt Fermanich**

17 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
18 201 17th Street NW, Suite 1700, Atlanta, GA 30363
19 404-322-6000
20 Fact Witness

21 **Subject Matter:** Mr. Fermanich was a sales representative for Bard assigned to the
22 territory where Plaintiffs' implanting facility is located at the time of Plaintiffs' filter
23 implant. Mr. Fermanich will testify at trial consistent with his deposition taken in this
24 MDL on March 27, 2017.

25 **Timothy Hug**

26 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
27 201 17th Street NW, Suite 1700, Atlanta, GA 30363
28 404-322-6000
Fact Witness

Subject Matter: Mr. Hug is a Vice President of Sales for BPV. Mr. Hug will testify at
trial about Bard's sales practices and procedures. Mr. Hug may also provide testimony
that will be consistent with his deposition taken on August 23, 2017.

1 **Christopher Ganser**

2 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
3 201 17th Street NW, Suite 1700, Atlanta, GA 30363
4 404-322-6000
5 Fact Witness

6 **Subject Matter:** Mr. Ganser is a retired employee of C. R. Bard who has worked for Bard
7 for approximately twenty-two years, and retired in 2011. He held various positions while
8 working for Bard, Vice President of Quality Assurance and Environmental Services and
9 Safety. Mr. Ganser may testify concerning how such policies, procedures, and practices
10 were developed, implemented and reviewed. Mr. Ganser may also testify concerning any
11 and all aspects of Bard's quality control and field assurance practices and procedures that
12 are, or have been, in place with respect to Bard's IVC filters as well as testimony that was
13 the subject of his deposition.

14 **Holly Glass**

15 8280 Greensboro Drive, Suite 601
16 McLean, VA 22101
17 703-752-1115
18 Fact Witness

19 **Subject Matter:** Ms. Glass was Vice President Government & Public Relations at C. R.
20 Bard from 2002 through 2009. She may testify regarding the matters that were the subject
21 of her employment with Bard and her deposition taken on September 23, 2016, in the
22 Bard IVC Filter MDL.

23 **Clement J. Grassi, M.D., FSIR**

24 18 Sussex Road
25 Winchester, MA 01890
26 617-732-7263
27 Expert Witness

28 **Subject Matter:** Dr. Grassi is a medical doctor and is a Fellow of the Society of
Interventional Radiology. He is certified in Radiology and holds a Certificate of Added
Qualifications in Vascular and Interventional Radiology. From 1985 to 2001, Dr. Grassi
held positions of Clinical Fellow, Instructor, and Assistant Professor of Radiology at
Harvard Medical School. He is currently affiliated with Hallmark Health and partners
Healthcare System. Dr. Grassi may provide expert testimony about the historical use,

1 risks, and benefits of IVC filters; the health conditions that IVC filters are used to treat;
2 and his experience with the Society of Interventional Radiology, specifically including the
3 history and use of the Quality Improvement Guidelines and Practice Parameters relating to
4 IVC Filters that have been published by the SIR. He may also testify about the medical
5 literature related to IVC filters. He may respond to assumptions, opinions, and testimony
6 offered by various Plaintiffs' experts as they relate to the same. Dr. Grassi is expected to
7 offer opinions and testify consistent with his expert report served in the MDL, and his
8 previous deposition testimony.

9 **Mickey Graves**

10 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
11 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

12 **Subject Matter:** Mr. Graves is a Senior Research and Development Engineer with BPV.
13 Mr. Graves may testify about BPV's policies and procedures in place for its research and
14 development of its products, including IVC Filters. He may testify regarding the testing,
15 development, and design of Bard's IVC Filters. He may also testify regarding the
16 evolution of Bard's IVC Filters, including the fact that Bard is constantly evaluating the
17 medical devices it sells, and it is constantly striving to improve the performance of those
18 devices. He may also provide testimony that was the subject matter of his previous
19 deposition testimony.

20 **David Henry, M.D.**

21 Radiology Consultants of Iowa, PLC – Sioux City
22 2720 Stone Park Blvd.
Sioux City, IA 51104
23 404-322-6000
Fact Witness

24 **Subject Matter:** Dr. Henry will testify regarding his treatment of Plaintiffs related to her
25 IVC filter. Dr. Henry is expected to testify consistent with his deposition taken on April 6,
26 2017.
27
28

Janet Hudnall

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Ms. Hudnall is a former employee of BPV who worked for BPV from 1998 to 2008. While at BPV, Ms. Hudnall held various positions, including Senior Marketing Manager. In those roles, Ms. Hudnall was involved with and has personal knowledge of, among other things, BPV's marketing strategies, policies, and practices with regard to the Bard's IVC filter line of products. Ms. Hudnall may testify concerning BPV's marketing strategies, policies, and practices with regard to the Recovery® and G2® Filters.

Ms. Hudnall may also testify concerning the training provided by BPV to physicians to familiarize them with the implantation and retrieval of the G2® Filter. Ms. Hudnall may also testify concerning BPV's practices and policies regarding complaints that were communicated by users. Ms. Hudnall may also testify concerning BPV's decision to conduct a clinical trial, called the EVEREST Study, and issues and events associated with or related to the EVEREST Study. In this regard, Ms. Hudnall may testify concerning the selection and clearance process for securing investigators and investigation sites, the creation and development of the study protocol, the creation and development of the informed consent form, and the steps taken by BPV to ensure that the study ran properly and according to established guidelines. She may also provide testimony that was the subject of her previous deposition testimony.

Brian Hudson

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Hudson has been an employee of BPV since 1999 as a Quality Engineering Technician, a Senior Engineering Technician, and a Quality Engineer. Mr. Hudson may provide testimony regarding filter risk assessment and analysis, review

1 of testing protocols and regulatory compliance data, and the creation of Failure Modes and
2 Effects Analyses (FMEA) that assess the potential hazards related to filters and the
3 mitigation of those hazards. He may also provide testimony that was the subject of his
4 previous deposition testimony.

5 **Lisa Hyde**

6 May be contacted c/o Lopez McHugh LLP
7 100 Bayview Circle, Suite 5600
8 Newport Beach, CA 92660
9 Fact Witness

8 **Subject Matter:** Ms. Hyde may offer testimony related to her alleged claims and
9 damages in this litigation.

10 **Mark Hyde**

11 May be contacted c/o Lopez McHugh LLP
12 100 Bayview Circle, Suite 5600
13 Newport Beach, CA 92660
14 Fact Witness

13 **Subject Matter:** Mr. Hyde may offer testimony related to his alleged claims and damages
14 in this litigation and the damages claimed by Mrs. Hyde.

15 **William Kuo, M.D.**

16 Stanford University
17 300 Pasteur Dr. Rm H3652
18 MC 5642
19 Stanford, CA 94305
20 Fact Witness

19 **Subject Matter:** Dr. Kuo will testify regarding his treatment of Plaintiffs related to her
20 IVC filter. Dr. Kuo is expected to testify consistent with his deposition taken on
21 March 23, 2017.

22 **John Lehman, M.D.**

23 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
24 201 17th Street NW, Suite 1700, Atlanta, GA 30363
25 Fact Witness

25 **Subject Matter:** Dr. Lehman was Group Medical Director and Vice President of Medical
26 Affairs for C. R. Bard from 1991 to 1995; he was a consultant and acting Medical
27 Director for C. R. Bard in 2003 and 2004. He may provide testimony regarding the
28 matters that were the subject of his work with Bard and his depositions.

1 **William Little**

2 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
3 201 17th Street NW, Suite 1700, Atlanta, GA 30363
4 404-322-6000
5 Fact Witness

6 **Subject Matter:** Mr. Little is BPV's former Vice President of Global Marketing. He may
7 provide testimony regarding BPV's marketing strategies, policies, and practices with
8 regard to Bard's IVC filter line of products. He may also testify regarding
9 communications by Bard to health care providers regarding its filters and changes or
10 revisions to those communications over time. He may also provide testimony that was the
11 subject matter of his previous deposition testimony.

12 **Judy Ludwig**

13 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
14 201 17th Street NW, Suite 1700, Atlanta, GA 30363
15 404-322-6000
16 Fact Witness

17 **Subject Matter:** Ms. Ludwig is currently Senior Manager of Field Assurance at BPV.
18 Ms. Ludwig may testify regarding any and all aspects of Bard's quality assurance
19 processes that are in place or that have been in place for Bard's retrievable IVC filters.
20 Ms. Ludwig may testify regarding Bard's processes and procedures for adverse complaint
21 handling, complaint investigation, and reporting of adverse events to the FDA regarding
22 its filters. She may also testify to certain communications and inspections/audits with
23 FDA. To the extent that evidence related to the FDA Warning and 483 Letters is admitted,
24 Ms. Ludwig may offer testimony regarding the same. Ms. Ludwig may also provide
25 testimony that was the subject of her previous deposition testimony.

26 **John McDermott**

27 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
28 201 17th Street NW, Suite 1700, Atlanta, GA 30363
29 404-322-6000
30 Fact Witness

31 **Subject Matter:** Mr. McDermott was President of BPV from 1996 through 2006. He may
32 testify about matters that were the subject of his employment with Bard and his
33 depositions.

1 **Patrick McDonald**

2 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
3 201 17th Street NW, Suite 1700, Atlanta, GA 30363
4 404-322-6000
5 Fact Witness

6 **Subject Matter:** Mr. McDonald is an employee of BPV as a Sales Representative and
7 Field Sales Trainer. He may testify regarding the matters that were the subject of his
8 deposition.

9 **Daniel Orms**

10 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
11 201 17th Street NW, Suite 1700, Atlanta, GA 30363
12 404-322-6000
13 Fact Witness

14 **Subject Matter:** Mr. Orms is a former employee of BPV. He may testify about matters
15 that were the subject of his employment with Bard and his depositions.

16 **David Poll, M.D.**

17 Department of Cardiology
18 Penn Medicine
19 230 West Washington Square
20 Philadelphia, PA 19106
21 (215) 829-5064
22 Expert Witness

23 **Subject Matter:** Dr. Poll is a clinical cardiologist who is board certified in internal
24 medicine, cardiovascular disease, and nuclear cardiology. Dr. Poll may provide expert
25 testimony relating to Plaintiffs' IVC filter and any medical treatment related to her cardiac
26 region as well as Plaintiffs' alleged cardiac-related health issues. He may respond to
27 assumptions, opinions, and testimony offered by various Plaintiffs' experts as they relate
28 to the same. Dr. Poll is expected to offer opinions and testify consistent with his expert
report(s) served in the MDL, and his previous deposition testimony.

29 **Shari O'Quinn**

30 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
31 201 17th Street NW, Suite 1700, Atlanta, GA 30363
32 404-322-6000
33 Fact Witness

34 **Subject Matter:** Ms. O'Quinn is a former employee of BPV who worked for BPV from
35 2003 to 2007. Ms. O'Quinn held three different positions while working for BPV,
36 including Manager of Regulatory Affairs, Director of Regulatory Affairs, and Director of

1 Regulatory and Clinical Affairs. Ms. O'Quinn may testify concerning BPV's overall
2 regulatory strategy for its filter lines, including the regulatory approach taken by BPV
3 concerning the Bard filters. Ms. O'Quinn may testify regarding communications between
4 the FDA and Bard concerning Bard's filters. She may also testify concerning Bard's post-
5 market activities concerning Bard's IVC filters, including investigations, and
6 communications with FDA. She may also provide testimony that was the subject of her
7 previous deposition testimony.

8 **Abithal Raji-Kubba**

9 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
10 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

11 **Subject Matter:** Ms. Raji-Kubba was the Vice President of Research and Development
12 for BPV. She was with the company from at least 2007 through 2011. She may testify
13 regarding her involvement in and knowledge of the design modifications that were made
14 to Bard's IVC filter line of products and the premarket testing that was conducted on the
15 modified devices. She may also testify regarding her knowledge regarding why these
16 design changes were needed and if and to what extent they made each IVC filter a safer
17 device and could have been instituted sooner. She may also provide testimony that was
18 the subject of her previous deposition testimony.

19 **Kimberly Romney**

20 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
21 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

22 **Subject Matter:** Ms. Romney is currently the Senior Product Manager for C. R. Bard,
23 Inc. She may provide testimony regarding BPV's marketing strategies, policies, and
24 practices with regard to Bard's IVC filter line of products. Ms. Romney may also testify
25 regarding communications by Bard to health care providers regarding its filters and
26 changes or revisions to those communications over time. She may also provide testimony
27 that was the subject of her previous deposition testimony.
28

Gin Schulz

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Ms. Schulz is a former employee of C. R. Bard, Inc. While at C. R. Bard, Inc., Ms. Schulz was the Staff Vice President of Quality Assurance Operations. Prior to working in this capacity, she worked for BPV as a Vice President of Quality Assurance. Ms. Schulz may testify live at trial regarding any and all aspects of Bard's quality assurance processes that are in place or that have been in place for Bard's IVC filters. Ms. Schulz may testify regarding Bard's processes and procedures for adverse complaint handling, complaint investigation, and reporting of adverse events to the FDA regarding its filters. Ms. Schulz may also provide testimony that was the subject of her previous deposition testimony.

Based on reports received by Bard, she may also testify regarding the rates of complications with Bard's IVC filters and any analysis performed by Bard regarding adverse event rates. Ms. Schulz may also testify that the complication rates with Bard's commercially available filters (whether fracture, migration, perforation, or tilt) remain below the guidelines established by the Society of Interventional Radiologists and Bard's action limits. She may also testify that, upon receiving reports of adverse events, Bard was and has been proactive in investigating those reports and analyzing whether the risk of fracture for its products is in line with industry standards and guidelines, which it is and always has been. She may also provide testimony that was the subject of her previous deposition testimony.

Christopher Smith

May be contacted c/o Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

Subject Matter: Mr. Smith is a former employee of BPV. He may testify about matters that were the subject of his employment with Bard and his deposition.

1 **Amy Sparks, M.D.**
2 Sparks Family Medicine, Ltd.
3 10155 W. Twain Ave., Suite #110
4 Las Vegas, Nevada 89147
5 (702) 722-2200 Phone
6 Fact Witness

7 **Subject Matter:** Dr. Sparks will testify regarding her medical treatment of Plaintiffs.
8 Dr. Sparks is expected to testify consistent with her deposition taken on July 7, 2017.

9 **William Stavropoulos, MD**
10 May be contacted c/o Samantha Conway, Christie & Young, P.C.
11 1880 John F. Kennedy Blvd, 10th Floor
12 Philadelphia, PA 19103
13 Fact Witness

14 **Subject Matter:** Dr. Stavropoulos was the principal investigator for his facility on the
15 EVEREST study. He has written articles concerning IVC filters. Additionally,
16 Dr. Stavropoulos may testify regarding his clinical experience with IVC filters such as his
17 experience with and techniques for placing and retrieving IVC filters, as well as
18 indications for the use of IVC filters. He may also testify regarding the advantages of
19 retrievable IVC filters. He may discuss the benefits, risks, and potential complications of
20 IVC filters, such as migration, fracture, and perforation, and the imaging and other
21 evaluation of those events and their clinical significance, if any. He may also testify
22 regarding the MAUDE database and whether it can be used to determine the fracture rate
23 of a medical device. He may also discuss the dynamic nature of the IVC as well as the
24 body's reaction to and endothelialization of IVC filters. He may also testimony about
25 matters that were the subject of his deposition.

26 **Jack Sullivan**
27 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
28 201 17th Street NW, Suite 1700, Atlanta, GA 30363
29 404-322-6000
30 Fact Witness

31 **Subject Matter:** Mr. Sullivan was a former Regional Sales Manager for BPV from 2005
32 to 2013. Prior to 2005, he held other sales positions with BPV. He may testify about
33 BPV's sales practices and procedures, and the sales person's role in interacting with a
34 doctor and the responsibility of sales people to report adverse events as well as about

1 matters that were the subject of his depositions.

2 **Mehdi Syed**

3 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
4 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

5 **Subject Matter:** Mr. Syed is the current Vice President of Operations Finance at C. R.
6 Bard, Inc. Mr. Syed may testify about the net worth of BPV and C. R. Bard, Inc., as well
7 as the percentage of Bard's revenue attributable to BPV and filter products specifically.
8 Mr. Syed may also testify about the nature of Bard's shareholders and the process and
9 rationale behind dividend payments. He may also provide testimony that is the subject of
10 his deposition.

11 **Alex Tessmer**

12 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
13 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

14 **Subject Matter:** Mr. Tessmer is a Product Manager at BPV. Mr. Tessmer was previously
15 employed by BPV as an engineer between 1997 and June 2005. In that position,
16 Mr. Tessmer contributed to filter product development occurring during the period 2002
17 to June 2005. He may provide general testimony regarding mechanical engineering and
18 specific testimony regarding product design, technology development, and materials
19 testing. He may also provide testimony that was the subject of his previous deposition
20 testimony.

21 **Ronald A. Thisted, Ph.D.**

22 Office of the Provost
23 The University of Chicago
Levi Hall, Room 432
5801 South Ellis Avenue
Chicago, IL 60637
24 773-702-5539
25 Expert Witness

26 **Subject Matter:** Dr. Thisted is a Professor in the Department of Public Health Sciences,
27 the Department of Statistics, the Department of Anesthesia & Critical Care, the
28 Undergraduate College, and the Committee on Clinical Pharmacology and

1 Pharmacogenomics at the University of Chicago. He is an expert in the fields of statistics,
 2 biostatistics, mathematics, and epidemiology. He may respond to assumptions, opinions,
 3 and testimony offered by various Plaintiffs' experts as they relate to the same. Dr. Thisted
 4 is expected to offer opinions and testify consistent with his expert report served in the
 5 MDL, and his previous deposition testimony.

6 **Donna-Bea Tillman, Ph.D., MPA, FRAPS**

7 Biologics Consulting
 8 400 N. Washington Street, Suite 100
 9 Alexandria, Virginia 22314
 703-739-5695
 Expert Witness

10 **Subject Matter:** Dr. Tillman may provide expert testimony concerning FDA regulatory
 11 requirements, FDA regulatory compliance, the FDA clearance process, and post-clearance
 12 monitoring requirements. Dr. Tillman may further testify about the specific steps Bard
 13 followed to obtain FDA clearance of its IVC filters, and Bard's compliance with post-
 14 clearance monitoring requirements. To the extent that evidence related to the FDA
 15 Warning and 483 Letters is admitted, Dr. Tillman may testify regarding the same.
 16 Dr. Tillman is expected to offer opinions and testify consistent with her expert report(s)
 17 served in the MDL, and her previous deposition testimony.

18 **Scott Trerotola, MD**

19 May be contacted c/o Samantha Conway, Christie & Young, P.C.
 20 1880 John F. Kennedy Blvd, 10th Floor
 Philadelphia, PA 19103
 Fact Witness

21 **Subject Matter:** Dr. Trerotola may testify regarding his clinical experience with IVC
 22 filters such as his experience with and techniques for placing and retrieving IVC filters, as
 23 well as indications for the use of IVC filters. He may also testify regarding the advantages
 24 of retrievable IVC filters. He may discuss the benefits, risks, and potential complications
 25 of IVC filters, such as migration, fracture, and perforation, and the imaging and other
 26 evaluation of those events and their clinical significance, if any. He may also discuss the
 27 dynamic nature of the IVC as well as the body's reaction to and endothelialization of IVC
 28 filters. He may also provide testimony that was the subject of his previous deposition

1 testimony.

2 **Doug Uelman**

3 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
4 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

5 **Subject Matter:** Mr. Uelman was employed by Bard from 1996 to 2005 as Vice
6 President for Quality Assurance. Prior to working in that capacity, Mr. Uelman was
7 BPV's Director of Quality Assurance. Mr. Uelman may testify regarding any and all
8 aspects of Bard's quality control processes that are in place or that have been in place for
9 Bard's IVC filters. Mr. Uelman may testify regarding Bard's processes and procedures for
10 adverse complaint handling, complaint investigation, and reporting of adverse events to
11 the FDA regarding its filters. He may also provide testimony that was the subject of his
12 previous deposition testimony.

13 **Carol Vierling**

14 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
15 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

16 **Subject Matter:** Ms. Vierling is a former employee of BPV who held the position of
17 Director of Regulatory Affairs from 1992 through June 2002. Ms. Vierling may also
18 testify regarding the 510(k) submission submitted by Bard to the FDA for the Recovery®
19 Filter in 2002. In this regard, she may testify regarding her signing of the Truthfulness and
20 Accuracy Statement included in that submission. She may also testify regarding the cover
21 letter to the FDA that accompanied the 510(k) submission, why it identified Kay Fuller as
22 the new FDA contact person for this device, how she signed that cover letter, and why she
23 signed the cover letter in the manner that she did. She may also testify to her interactions
24 with Kay Fuller and that Ms. Fuller never expressed any concerns to her regarding the
25 Recovery® Filter 510(k) submission, the testing of that device, the safety or efficacy of
26 that device, or the Asch clinical study regarding that device. She may also provide
27 testimony that was the subject of her previous deposition testimony.
28

1 **Bryan Vogel**

2 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
3 201 17th Street NW, Suite 1700, Atlanta, GA 30363
4 404-322-6000
5 Fact Witness

6 **Subject Matter:** Mr. Vogel is a Principal Clinical Assurance Specialist at BPV. He may
7 testify regarding his role and Bard's processes, procedures, and practices for adverse
8 complaint handling, complaint investigation, and reporting of adverse events to the FDA
9 regarding its filters. He may also testify regarding the qualifications and training of BPV's
10 Field Assurance personnel. He may also provide testimony that was the subject matter of
11 his previous deposition testimony.

12 **John Weiland**

13 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
14 201 17th Street NW, Suite 1700, Atlanta, GA 30363
15 404-322-6000
16 Fact Witness

17 **Subject Matter:** Mr. Weiland is a retired President and Chief Operating Officer of Bard.
18 He may testify regarding the matters that were the subject of his deposition.

19 **John Wheeler**

20 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
21 201 17th Street NW, Suite 1700, Atlanta, GA 30363
22 404-322-6000
23 Fact Witness

24 **Subject Matter:** Mr. Wheeler is a former Field Assurance Engineering Manager at BPV.
25 He may testify regarding Bard's processes, procedures, and practices for adverse
26 complaint handling, complaint investigation, and reporting of adverse events to the FDA
27 regarding its filters. He may also testify regarding the qualifications and training of BPV's
28 Field Assurance personnel. He may also testify regarding BPV's tracking and trending of
29 complaints regarding Bard IVC filters. He may also provide testimony that was the
30 subject matter of his previous deposition testimony.

31 **Steve Williamson**

32 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
33 201 17th Street NW, Suite 1700, Atlanta, GA 30363
34 404-322-6000
35 Fact Witness

36 **Subject Matter:** Mr. Williamson is the current President of BPV. Mr. Williamson may

1 testify concerning BPV's broad and overarching policies as a company and specifically
2 concerning Bard's IVC filters, including, but not limited to, the companies' business
3 practices, research and development, manufacturing, marketing and sales policies, and
4 regulatory strategies and policies. He may also provide testimony that was the subject of
5 his previous deposition testimony.

6 **Mark Wilson**

7 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
8 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

9 **Subject Matter:** Mark Wilson was the Director of Sales, Training, and Development at
10 C. R. Bard, Inc. from 2004 to 2011. Mr. Wilson may provide testimony regarding Bard's
11 sales practices and procedures. He may also testify regarding training programs for Bard's
12 sales personnel. He may also provide testimony that was the subject of his previous
13 deposition.

14 **Natalie Wong**

15 May be contacted c/o Nelson Mullins Riley & Scarborough LLP
16 201 17th Street NW, Suite 1700, Atlanta, GA 30363
404-322-6000
Fact Witness

17 **Subject Matter:** Ms. Wong is an employee of BPV. She began working for the company
18 in 2002 and has been the Quality Engineering Manager in Field Assurance since 2007.
19 Prior to working in this capacity, she worked for BPV as a Senior Quality Engineer.
20 Ms. Wong may testify regarding any and all aspects of Bard's quality control and field
21 assurance processes that are, or have been, in place for Bard's IVC filters. Ms. Wong may
22 testify regarding Bard's processes and procedures for adverse complaint handling,
23 complaint investigation, trending analysis, root cause analysis, data integrity audits, and
24 design failure mode analysis relating to Bard's IVC filters.

25 Based on reports received by Bard, she may also testify regarding the rates of
26 complications with Bard's IVC filters and analyses performed by Bard regarding adverse
27 event rates. She may also provide testimony that was the subject of her previous
28 deposition testimony.

1 **F. LIST OF EXHIBITS**

2 1. The parties have listed exhibits on their exhibit lists subject to pending
3 motions *in limine* and other rulings by the Court. By listing exhibits, the parties do not
4 contend that the exhibits are necessarily admissible and do not intend to waive any
5 objection they have to the admissibility of the same.

6 2. The parties have met and conferred on the issue of exchanging and
7 providing to the Courtroom Deputy Clerk with impeachment exhibits 48 hours in advance
8 of the trial. The parties agree they would like to provide any impeachment exhibits to the
9 Courtroom Deputy Clerk, 24 hours before their intended use.

10 3. If the Court grants, Defendants' Motion in Limine relating to Recovery
11 migration deaths, Defendants propose that the parties use the same redactions to exhibits
12 agreed to and approved by the Court in the *Jones* trial.

13 4. The following Exhibit Lists are attached hereto: **Exhibit A** – Plaintiffs'
14 Exhibit List with Defense Objections; **Exhibit B** – Defendants' Additional Exhibit List
15 with Plaintiffs' and Defendants' Objections.

16 a. Defendants' Contention:

17 Many of the documents listed as potential exhibits were produced by
18 Defendants subject to a Protective Order (Dkt. 268 and 269). Throughout this
19 litigation the parties have been filing and moving to seal certain documents
20 pursuant to that Order. However, the Protective Order does not cover the use of
21 documents as exhibits at trial. (See, Dkt 268, Para, 28). The Court addressed this in
22 the prior bellwether trials and in its ruling on Bard's Motion for reconsideration.
23 Pursuant to the Court's ruling in Dkt 12069, Defendants raise this issue to preserve
24 it and are prepared to address it during the Pretrial Conference. Until the exhibits
25 are admitted, Defendants do not know which exhibits, if any, they need to move to
26 seal. Further, many of the exhibits are admitted, but the substance is not discussed
27 in open Court. Defendants request that the exhibits be maintained by the Court
28 reporter and not made available publicly throughout the trial and until the Court

1 rules on any motion to seal, and that the Court set a briefing schedule for a post-
2 trial briefing schedule on a motion to seal.

3 b. Plaintiffs' Contention:

4 Plaintiffs disagree with this Defendants' Contention and maintain that
5 exhibits are public record at the time admitted into evidence. "It is well established
6 that the release of information in open court is a publication of that information."
7 *Littlejohn v. BIC Corp.*, 851 F.2d 673, 680 (3d Cir. 1988). Further, Plaintiffs
8 contend Local Rule 5.6 regards the pre-trial sealing of exhibits and has no
9 application to the use of exhibits at trial.

10 As the Court explained in its Orders, "'the release of information in open
11 court is a publication of that information and . . . operates as a waiver of any rights
12 a party had to restrict its future use.'" (Doc. 11642 at 2; Doc. 12069 at 3; (quoting
13 *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, No. CIV.A. 09-290, 2013 WL
14 1336204, at *5 (W.D. Pa. Mar. 29, 2013)). To the extent an exhibit was not merely
15 admitted into evidence but also was published or discussed in open court, the
16 exhibit is no longer confidential, and Defendants have waived the right to have the
17 exhibit sealed. *See In re Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2014
18 WL 10537440, at *6 (N.D. Cal. Aug. 6, 2014) ("[W]here, as here, the parties did
19 not request closure of the courtroom . . . and the disclosures were not inadvertent,
20 the Court will not permit an ex post facto redaction of statements made in open
21 court[.]"); *Fleming v. Escort, Inc.*, No. CV 09-105-S-BLW, 2013 WL 1290418, at
22 *4.

23 5. The following exhibits are admissible in evidence and may be marked in
24 evidence by the Clerk:

25 a. Any exhibit listed in **Exhibits A and B** that is not objected to
26 is agreed to by the parties as admissible.

27 6. As to the following exhibits, the parties have reached the following
28 stipulations:

The following records are stipulated to be authentic and satisfy the business records exception, but the parties reserve all other available objections:

a. Plaintiffs' medical records and bills.

7. As to the following exhibits, the party against whom the exhibit is to be offered objects to the admission of the exhibit and offers the objection stated below:

a. Plaintiffs' Exhibits: See attached **Exhibit A**.

b. Defendants' Exhibits: See attached **Exhibit B**.

The parties shall submit their exhibit lists in writing, five days before trial, in a format to be designated by the Court at the Final Pretrial Conference, in WordPerfect® 9.0 format either by e-mail to Nancy_Outley@azd.uscourts.gov or on an IBM-compatible computer disk.

G. DEPOSITIONS TO BE OFFERED

1. Per the deadline set by the Court, on August 22, 2018, the parties submitted to the Court their respective new depositions with designations not previously reviewed by the Court with subsequent rulings on objections with the portions to be read or submitted at trial identified by page and line number. Pursuant to their stipulation and the Court's approval, on September 4, 2018, the parties will submit any additional and/or withdrawn case specific deposition testimony and objections based on the Court's ruling on Bard's Motion for summary judgment, pending orders on Motions in Limine, or the unique aspects of Wisconsin law to deposition testimony previously reviewed by the Court in the prior bellwether trials.

2. The parties have included deposition designations subject to pending motions in limine and other rulings by the Court. By making those designations the parties do not contend that the testimony is necessarily admissible and do not intend to waive any objection they have to the admissibility of the same.

H. MOTIONS IN LIMINE (JURY TRIAL)

All motions *in limine* have been filed and fully briefed. Those that have not yet been ruled on are set forth in Section I, below.

I. LIST OF PENDING MOTIONS

1. Plaintiffs' MIL #1 To Exclude Or Limit FDA Evidence That Is Beyond The Scope Of The Court's Order
2. Plaintiffs' MIL #2 To Exclude Or Limit Argument And Evidence Re The Surgeon General' Call To Action
3. Plaintiffs' MIL #3 To Exclude Evidence That November 2012 And May 2013 Incidents Caused Or Contributed To Hyde's G2X Filter Failure/Fracture
4. Plaintiffs' MIL #4 To Exclude Or Limit Argument And Evidence Regarding Bard's G2X IFU
5. Plaintiffs' MIL #5 To Exclude Evidence Of Interventional Radiologist ("SIR") "Guidelines"
6. Defendants' MIL #1 To Exclude Evidence Of Recovery Filter Cephalad Migration Deaths
7. Defendants' MIL #2 To Exclude Evidence Of Marketing Materials
8. Defendants' MIL #3 To Exclude Evidence Of The SNF As A Reasonable Alternative Design
9. Defendants' MIL #4 To Exclude Testimony About Personal Opinions Of Dr. Muehrcke
10. Defendants' MIL #5 To Exclude Opinion Testimony Of Dr. Kandarpa
11. Defendants' MIL #6 To Exclude Evidence And Argument About Informed Consent
12. Defendants' Motion To Bifurcate Trial And Plaintiffs' Response In Opposition

J. PROCEDURES FOR EXPEDITING TRIAL

The parties agree to the following procedures that might expedite trial to the extent possible: (a) presenting stipulated summaries of work history and professional background and qualifications of witnesses rather than using deposition excerpts. The parties agree to

1 meet and confer and at least 24 hours before a deposition is played to provide the
 2 proposed summary to opposing counsel for review and approval; (b) stipulations on
 3 authenticity and foundation; and (c) using the courtroom technology to expedite the
 4 presentation of evidence. The parties will also contact Nancy Outley at 602-322-7645 to
 5 arrange a time to visit the courtroom and examine its technology.

6 **K. ESTIMATED LENGTH OF TRIAL**

7 All times set forth by the parties below are approximate and given to the best of
 8 counsels' ability. Nothing about these stated times is intended to limit the total time
 9 available to either party in the event less time is used for one of the categories, as that time
 10 will simply be reallocated to another category.

11 33 hours for Plaintiffs

12 1.5 hours opening statement

13 2.5 hours for closing, rebuttal and punitive damages

14 29 hours for direct and cross examination

15 30 hours for Bard

16 Bard objects to any additional time being added to the trial after the entry of this
 17 Pretrial Order. In the previous MDL trials, Bard made strategic decisions based on the
 18 time allocated by the Court from the very outset of trial. Those strategic decisions
 19 included, but were not limited to, determining the amount of time to spend on the cross-
 20 examination of several of the Plaintiffs' principal experts. The Defendants believe that the
 21 Court's decision to afford the Plaintiffs additional time, while certainly within the Court's
 22 discretion, unfairly penalized the Defendants for abiding by the limitations set by the
 23 Court and caused prejudice (particularly given how the Plaintiffs squandered the time
 24 originally provided with repetitive questioning and the frequent focus on collateral issues).
 25 *See, e.g., Amarel v. Connell*, 102 F.3d 1494, 1514 (9th Cir. 1996), *as amended* (Jan. 15,
 26 1997); see also *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1509
 27 (9th Cir. 1995) (noting unfairness to defendant in providing Plaintiffs additional time after
 28 defendant had already made strategic decisions based on the court's original allocation).

1 **L. JURY DEMAND**

2 A jury trial has been requested.

- 3 1. The parties stipulate that the request was timely and properly made.

4 **M. JOINT PROPOSED JURY INSTRUCTIONS, JOINT PROPOSED VOIR**
5 **DIRE QUESTIONS, AND PROPOSED FORMS OF VERDICT FOR JURY**
6 **TRIALS**

7 The joint Proposed Jury Instructions, joint Proposed *Voir Dire* Questions, and
8 Proposed Forms of Verdict shall be filed in accordance with the instructions contained in
9 the Order Setting Final Pretrial Conference.

10 **N. CERTIFICATIONS**

11 The undersigned counsel for each of the parties in this action does hereby certify
12 and acknowledge the following:

- 13 1. All discovery has been completed.
- 14 2. The identity of each witness has been disclosed to opposing counsel.
15 Defendants cannot stipulate to this and incorporate their objection in
16 Section E.
- 17 3. Each exhibit listed herein: (1) is in existence; (2) is numbered; and
18 (3) will be disclosed and shown to opposing counsel at a later date
19 mutually agreeable to the parties. The parties agree demonstrative
20 exhibits will be exchanged or made available for inspection at a later
21 date agreed to by the parties.
- 22 4. The parties agree and stipulate that the statement of the case used in
23 the juror questionnaire approved by the Court is to be used as the
24 parties' joint statement of the case.
- 25 5. The parties have complied in all respects with the mandates of the
26 Court's Rule 16 Scheduling Order and Order Setting Final Pretrial
27 Conference.
- 28

1 6. The parties have made all of the disclosures required by the Federal
2 Rules of Civil Procedure (unless otherwise previously ordered to the
3 contrary).

4 7. The parties acknowledge that once this Proposed Final Pretrial Order
5 has been signed and lodged by the parties, no amendments to this
6 Order can be made without leave of Court.

7 **O. INFORMATION FOR COURT REPORTER**

8 In order to facilitate the creation of an accurate record, the Parties will file a
9 “Notice to Court Reporter” **one week before trial** containing the following information
10 that may be used at trial:

- 11 1. Proper names, including those of witnesses.
- 12 2. Acronyms.
- 13 3. Geographic locations.
- 14 4. Technical (including medical) terms, names or jargon.
- 15 5. Case names and citations.
- 16 6. Pronunciation of unusual or difficult words or names.

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1 The parties will also send to the court reporter a copy of the concordance from key
2 depositions.

3 LOPEZ McHUGH LLP

NELSON MULLINS RILEY &
SCARBOROUGH LLP

5 By: s/ Ramon Rossi Lopez
6 Ramon Rossi Lopez
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*Attorneys for C. R. Bard, Inc. and Bard
Peripheral Vascular, Inc.*

1 _____
2 Based on the foregoing,
3

4 **IT IS ORDERED** that this Proposed Final Pretrial Order jointly submitted by the
5 parties is hereby **APPROVED** and **ADOPTED** as the official Pretrial Order of this Court.

6 DATED this ____ day of _____, 2018.
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9 _____
10 David G. Campbell
11 United States District Judge
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